



CITY OF RIO RANCHO
ORDINANCE

ORDINANCE NO. 96

ENACTMENT NO. 08-16

1 AN ORDINANCE GRANTING TO CABLE ONE, INC., FOR A PERIOD OF UP TO TEN
2 (10) YEARS FROM AND AFTER THE PASSAGE, ACCEPTANCE AND EFFECTIVE
3 DATE OF THIS ORDINANCE, THE NONEXCLUSIVE RIGHT, PRIVILEGE, PERMIT AND
4 FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE TELEVISION
5 SYSTEM IN, UPON, ALONG, ACROSS, ABOVE, OVER, AND UNDER STREETS,
6 ALLEYS, EASEMENTS, OPEN AREAS, PUBLIC WAYS AND PUBLIC PLACES, NOW
7 LAID OUT OR DEDICATED, AND ALL EXTENSIONS THEREOF AND ADDITIONS
8 THERETO, IN THE CITY OF RIO RANCHO, PROVIDING TERMS AND CONDITIONS
9 FOR THE OPERATION OF SUCH CABLE TELEVISION SYSTEM AND THE PAYMENT
10 OF FEES THEREFORE.

11
12 **Section 1. FINDINGS.** The Governing Body hereby finds:

13
14 (A) The City is authorized to grant and renew franchises for the installation,
15 operation and maintenance of cable television systems within the City.

16
17 (B) The City granted Cable One, Inc., a Delaware corporation, a franchise to
18 provide cable television services in the City in Ordinance no. 95-007.

19
20 (C) Cable One, Inc. submitted a request pursuant to 47 U.S.C. §546 for a
21 renewal franchise to construct, upgrade, operate and repair a cable system in the City
22 of Rio Rancho and to provide Cable Service within the City.

23
24 (D) The City has endeavored to identify the future cable-related needs and
25 interests of the community; to consider the financial, technical, and legal qualifications
26 of Cable One, Inc.; and to determine whether Cable One, Inc.'s plans for upgrading and
27 operating its system are adequate.

28
29 (E) The City, having considered the interests proposed and advanced, has found
30 that the grant of the renewal franchise requested, subject to conditions, is in the public
31 interest and hereby grants a cable franchise renewal to Cable One, Inc. as follows:

32
33 **Section 2. DEFINITIONS.**

34 References to any City official or City office also refer to any official or office that
35 succeeds to any or all of the responsibilities of the named official, whether by
36 succession or otherwise. In addition, the following definitions shall apply:

37
38 ACCESS, PEG ACCESS, OR PEG USE. The availability of selected Cable System
39 channels or open video system channels for non-commercial public, education or
40 government use by various eligible agencies, institutions, organizations, groups, and
41 individuals, including the City and its designated access providers, to acquire, create,
42 and distribute programming not under a Franchisee's editorial control (except as
43 required by applicable law) for which the Cable System will have no legal liability,
44 including, but not limited to:

1
2 (1) Public Access or Public Use. Non-commercial access where
3 organizations, groups, or individual members of the general public are the primary or
4 designated programmers or users having editorial control over their programming.
5

6 (2) Education Access or Education Use. Non-commercial access
7 where accredited schools are the primary or designated programmers or users having
8 editorial control over their programming.
9

10 (3) Government Access or Government Use. Non-commercial access
11 where government institutions or their designees are the primary or designated
12 programmers or users having editorial control over their programming Affiliate.
13

14 AFFILIATE. When used in connection with Franchisee, means any Person who owns
15 or controls, is owned or controlled by, or is under common ownership or control with the
16 Franchisee.
17

18 CABLE ACT. The federal Cable Communications Policy Act of 1984 as amended by
19 the Cable Television Consumer Protection and Competition Act of 1992 and the
20 Telecommunications Act of 1996, as any of them may be amended.
21

22 CABLE MODEM SERVICE. A two-way activated system that provides access to the
23 internet and data transmission at speeds at least as great as 200 kilobits per second.
24

25 CABLE ORDINANCE, ORDINANCE or FRANCHISE. This ordinance and any
26 amendments, exhibits or appendices hereto.
27

28 CABLE SERVICE. The one-way transmission to Subscribers of (i) video programming,
29 or (ii) other programming service; and the Subscriber interaction, if any, which is
30 required for the selection or use of such video programming or other programming
31 service.
32

33 CABLE SYSTEM. A facility, consisting of a set of closed transmission paths and
34 associated signal generation, reception, and control equipment that is designed to
35 provide Cable Service which includes video programming and which is provided to
36 multiple Subscribers within a community, but such term does not include:
37

38 (1) a facility that serves only to retransmit the television signals of one or more
39 television broadcast stations;
40

41 (2) a facility that serves Subscribers without using, or connecting to a facility that
42 uses, any Public Right-of-Way within the City;
43

44 (3) a facility of a common carrier which is subject, in whole or in part, to the
45 provisions of Title II (Common Carriers) of the Federal Communications Act of 1934, as
46 amended, except that such facility shall be considered a Cable System to the extent
47 such facility is used in the transmission of video programming directly to Subscribers,
48 unless the extent of such use is solely to provide interactive on-demand services;
49

50 (4) any facilities of any electric utility used solely for operating its electric utility

1 systems; or

2
3 (5) an Open Video System (as described in 47 U.S.C. § 573) that is certified by
4 the Federal Communications Commission (FCC).

5
6 CITY. The City of Rio Rancho; when used to describe a geographic area, the term
7 refers to the boundaries of the City of Rio Rancho, New Mexico, as they exist now or
8 may exist in the future via annexation or consolidation.

9
10 CITY COUNCIL. The Rio Rancho Governing Body, or its successor, the governing
11 body of the City.

12
13 DESIGNATED ACCESS PROVIDER. An eligible entity or entities designated by the
14 City to manage some or all of the programming of the PEG channels, facilities and
15 equipment.

16
17 FCC. The Federal Communications Commission.

18
19 FRANCHISE. This document, *i.e.*, this Ordinance and, upon the written unconditional
20 and acknowledged acceptance by the Franchisee, a contractual agreement, executed
21 between the City and the Franchisee, containing the specific provisions of the
22 authorization granted, including references, specifications, requirements and other
23 related matters.

24
25 FRANCHISE AREA. All parts of the City now existing or hereafter annexed.

26
27 FRANCHISEE. Cable One, Inc., and its lawful and permitted successors, assigns and
28 transferees.

29
30 GROSS REVENUE. Any and all revenue of the Franchisee, of any kind, nature or form
31 derived from the operation of a Cable System to provide Cable Service. Gross
32 Revenues shall be interpreted consistent with FCC regulations and rulings and include,
33 by way of example and not limitation, revenues from equipment sales and rentals,
34 services (including Cable Modem Services and any other new services provided in the
35 future, if such services are determined by statute, the FCC, or the judiciary to be a
36 either a Cable Service or whose revenue should be considered for franchise fee
37 calculation purposes), late fees and other Subscriber charges, leased channel fees,
38 advertising and shopping services, but it does not extend to installation revenues,
39 amounts received by the Franchisee as a tax, fee (including franchise fee) or
40 assessment of general applicability collected by the Franchisee for pass-through to a
41 governmental agency or reimbursement from third parties for expenses, nor to bad debt
42 or to refunds or credits issued.

43
44 PERSON. An individual or a corporation, trust, partnership, limited liability company, or
45 other entity recognized by law.

46
47 PEG CHANNEL. Any capacity on the cable system set aside by the Franchisee for
48 PEG (public, education, or government) use.

49
50 PUBLIC RIGHTS-OF-WAY. The surface of and the space above and below any street,

1 road, highway, freeway, bridge, lane, path, alley, court, sidewalk, parkway, or right-of-
2 way or easement dedicated to compatible uses, now or hereafter existing within the City
3 which may be properly used for the purpose of installing, maintaining, and operating a
4 Cable System; and any other property that the Franchisee is entitled by state or federal
5 law to use by virtue of the grant of this Franchise.

6
7 **STANDARD DROP.** An aerial or underground connection extending no more than 150
8 feet from the potential subscriber's demarcation point to the nearest point of distribution
9 on the cable system from which Cable Service can be provided to that subscriber.

10
11 **SUBSCRIBER.** The City or any person who lawfully is receiving Cable Service from a
12 Franchisee and does not further distribute such service.

13
14 **SUBSCRIBER NETWORK.** The fibers, coaxial cables and the electronic devices and
15 other components that are used in the provision of Cable Service to subscribers.

16
17 **SYSTEM HEADEND.** Any facility for signal reception and dissemination on a Cable
18 System, including cables, antennas, wires, satellite dishes, monitors, switchers,
19 modulators and all other related equipment and facilities.

20
21 **Section 3. GRANT OF FRANCHISE; LIMITS AND RESERVATIONS.**

22 (A) Grant, term and effective date.

23 (1) The City hereby grants to the Franchisee, a nonexclusive right,
24 privilege, permit and franchise to construct, operate, and maintain a cable television
25 system in, upon, across, above over and under, streets, alleys, easements, open areas,
26 public ways, and public places now laid out or dedicated in the City and upon
27 annexation of any territory to the City, this Franchise shall extend to the territory so
28 annexed, commencing on the effective date of the Franchise and extending for an initial
29 term of eight (8) years unless earlier terminated in accordance with this Franchise or
30 applicable law. If the audit described in Section 6(G) does not show an underpayment
31 of Franchise Fees by five percent (5%) or more, this Franchise shall be extended for an
32 additional two (2) year period, unless earlier terminated in accordance with this
33 Franchise or applicable law.

34 (2) The Franchise and its terms and provisions shall be unconditionally
35 adopted by written instrument executed and acknowledged by the appropriate officials
36 of the City and delivered to the Franchisee which shall accept same not later than thirty
37 (30) days after receiving it by acknowledging the Franchisee's acceptance in writing.
38 The date of the Franchisee's acceptance shall be the effective date of the Franchise.

39
40 (B) Surrender. The Company may surrender this Franchise at any time upon
41 filing with the City a written notice of its intention so to do, at least six (6) months before
42 the surrender date. All the rights and privileges and all of the obligations, duties, and
43 liability of the Company under this Ordinance, except as to the extent previously
44 accrued hereunder, shall terminate on the surrender date specified in such notice.

45
46 (C) Relation to other provisions of law.

47 (1) The Franchise issued by the City is subject to applicable federal and
48 state law. References to laws or "applicable laws" in this Franchise include federal,
49 state and local laws (and regulations lawfully adopted pursuant to those laws) now in
50 effect, and to amended or new federal and state laws lawfully enacted. This Franchise

1 does not confer rights upon the Franchisee other than as expressly provided herein, nor
2 pass rights by implication except those that may otherwise vest pursuant to governing
3 law. The Franchise does not convey title, equitable or legal, in the Public Rights-of-
4 Way or public property.

5 (2) This Franchise and all rights granted under the Franchise are subject
6 to the lawful and non-discriminatory or arbitrary exercise of the police powers the City
7 now has or may later obtain, including but not limited to the power of eminent domain;
8 and are further subject to the exercise of the City's rights as a property owner under
9 state and federal laws. Except as expressly set forth herein, neither the granting of this
10 Franchise or any provision herein shall constitute a waiver or bar to the exercise of any
11 governmental right or power of the City, including without limitation the right of eminent
12 domain, and the right to grant additional cable franchises. However, once effective, this
13 Franchise is a contract and except as to those changes which are the result of the
14 City's lawful and necessary exercise of police powers, neither party may take any
15 unilateral action which changes the explicit mutual promises.

16 (3) The Franchise issued and the franchise fee paid hereunder are not in
17 lieu of any other required generally applicable permit, authorization, fee, charge or tax.
18 Without limiting the foregoing, the City, among other things, does not waive the
19 requirements of, or the Franchisee's duty to obtain, all applicable permits, and to
20 comply with the conditions thereof; to comply with zoning laws; or to comply with any
21 generally applicable codes, ordinances and regulations governing the construction of
22 the cable system.

23
24 (D) No recourse. Without limiting such immunities as the City or other persons
25 may have under applicable law, Franchisee shall have no monetary recourse
26 whatsoever against the City or its officials, boards, commissions, agents or employees
27 for any loss, costs, expense or damage arising out of any provision or requirement of
28 this Franchise or because of the enforcement of this Franchise or other applicable law,
29 unless the same shall be caused by criminal acts or by willful or gross negligence.

30
31 (E) Effect of change in law. In the event that state or federal laws, rules, or
32 regulations preempt a provision or limit the enforceability of a provision of this franchise,
33 then the provision shall be read to be preempted or limited to the extent and for the
34 time, but only to the extent and for the time, that such laws, rules or regulations validly
35 acted to preempt or limit such provision. In the event such state or federal law, rule, or
36 regulation is subsequently repealed, rescinded, amended, or otherwise changed, so
37 that the provision hereof that had been preempted or limited is no longer so affected,
38 such provision shall thereupon return to full force and effect and shall thereafter be
39 binding on the parties hereto, without the requirement of further action on the part of the
40 affected party.

41 42 **SECTION 4. RENEWAL PROCEDURES**

43 This Franchise may be renewed by the City upon application of the Franchisee
44 pursuant to the procedure established by this section, and in accordance with the Cable
45 Acts of 1984 and 1992, the Telecommunications Act of 1996, and/or any future relevant
46 laws.

47
48 (A) (1) The City may, on its own initiative during the 6-month period which
49 begins with the 36th month before the franchise expiration, commence a proceeding
50 which affords the public in the Franchise Area appropriate notice and participation for

1 the purpose of (a) identifying the future cable-related community needs and interests,
2 and (b) reviewing the performance of the Franchisee under the franchise during the
3 then current franchise term. If the Franchisee submits, during such 6-month period, a
4 written renewal notice requesting the commencement of such a proceeding, the City
5 shall commence such a proceeding not later than 6 months after the date such notice is
6 submitted;

7
8 (2) The Franchisee may not invoke the renewal procedures set forth in
9 subsections B through G unless such a proceeding is timely requested by the
10 Franchisee on its own initiative.

11
12 (B) (1) Upon completion of a proceeding under subsection A, the
13 Franchisee seeking renewal of a franchise may, in its own initiative or at the request of
14 the City, submit a proposal for renewal.

15
16 (2) Subject to 47 U.S.C. §544, any such proposal shall contain such
17 material as the City may require, including proposals for an upgrade of the cable
18 system.

19
20 (3) The City may establish a date which such proposal shall be
21 submitted.

22
23 (C) (1) Upon submittal by the Franchisee of a proposal to the City for the
24 renewal of a franchise pursuant to subsection B, the City shall provide prompt public
25 notice of such proposal and, during the 4-month period which begins on the date of the
26 submission of the Franchisee's proposal pursuant to subsection B, renew the franchise
27 or, issue a preliminary assessment that the franchise should not be renewed and, at the
28 request of the Franchisee or on its own initiative, commence an administrative
29 proceeding, after providing prompt public notice of such proceeding, in accordance with
30 paragraph (2) to consider whether:

31 (a) the Franchisee has substantially complied with the material
32 terms of the existing franchise and with applicable law;

33 (b) the quality of the Franchisee's service, including signal
34 quality, response to consumer complaints, and billing practices, but without regard to
35 the mix or quality of cable services or other services provided over the system, has
36 been reasonable in light of community needs;

37 (c) the Franchisee has the financial, legal and technical ability
38 to provide the services, facilities and equipment as set forth in the Franchisee's
39 proposal; and

40 (d) the Franchisee's proposal is reasonable to meet the future
41 cable-related community needs and interests, taking into account the cost of meeting
42 such needs and interests.

43
44 (2) In any proceeding under paragraph (1), the Franchisee shall be
45 afforded adequate notice and the Franchisee and the City, or its designee, shall be
46 afforded fair opportunity for full participation, including the right to introduce evidence
47 (including evidence related to issues raised in the proceeding under subsection A) to
48 require the production of evidence, and to question witnesses. A transcript shall be
49 made of any such proceeding.
50

1 (3) At the completion of a proceeding under this subsection, the City
2 shall issue a written decision granting or denying the proposal for renewal based upon
3 the record of such proceeding, and transmit a copy of such decision to the Franchisee.
4 Such decision shall state the reasons therefore.
5

6 (D) Any denial of a proposal for renewal that has been submitted in
7 compliance with subsection B shall be based on one or more adverse findings made
8 with respect to the factors described in subparagraphs (a) through (d) of subsection
9 C(1), pursuant to the record of the proceeding under subsection C. The City may not
10 base a denial of renewal on a failure to substantially comply with the material terms of
11 the franchise under subsection C(1)(a) or on events considered under subsection
12 C(1)(b), unless the City has provided the Franchisee with notice and the opportunity to
13 cure, or in any case in which it is documented that the City has waived its right to
14 object, or the Franchisee gives written notice of a failure or inability to cure and the City
15 fails to object within a reasonable time after receipt of such notice.
16

17 (E) (1) If the Franchisee's proposal for renewal has been denied by a final
18 decision of the City made pursuant to this section, or has been adversely affected by a
19 failure of the City to act in accordance with the procedural requirements of this section,
20 the Franchisee may appeal such final decision or failure pursuant to the provisions of
21 47 U.S.C. 555.

22 (2) The court shall grant appropriate relief if the court finds that:
23 (a) any action of the City, other than harmless error, is not in
24 compliance with the procedural requirements of this section; or
25 (b) In the event of a final decision of the City denying the
26 renewal proposal, the Franchisee has demonstrated that the adverse finding of the City
27 with respect to each of the factors described in subparagraphs (a) through (d) of
28 subsection C (1) on which the denial is based is not supported by a preponderance of
29 the evidence, based on the record of the proceeding conducted under subsection C.
30 (c) Any action against the City shall be subject to the limitations
31 of 47 U.S.C. 555a.
32

33 (F) Any decision of the City on a proposal for renewal shall not be considered
34 final unless all administrative review which may be required from time to time by the
35 State of New Mexico has occurred or the opportunity therefore has lapsed.
36

37 (G) For purposes of this section, the term "franchise expiration" means the
38 date of the expiration of the term of this franchise, as provided under the franchise, as it
39 was in effect on the date of the enactment of this title.
40

41 (H) Notwithstanding the provisions of subsections A through G of this section,
42 the Franchisee may submit a proposal for the renewal of a franchise pursuant to this
43 subsection at any time, and the City may, after affording the public adequate notice and
44 opportunity for comment, grant or deny such proposal at any time (including after
45 proceedings pursuant to this section have commenced.) The provisions of subsections
46 A through G of this section shall not apply to a decision to grant or deny a proposal
47 under this subsection. The denial of a renewal pursuant to this subsection shall not
48 affect action on a renewal proposal that is submitted in accordance with subsections A
49 through G.
50

1 (I) Notwithstanding the provisions of subsections A through H, any lawful
2 action to revoke the Franchisee's franchise for cause shall not be negated by the
3 subsequent initiation of renewal proceedings by the Franchisee under this section.
4
5

6 **Section 5. TRANSFERS.**

7 (A) The Cable System and this Franchise shall not be sold, assigned,
8 transferred, leased or disposed of, either in whole or in part, either by involuntary sale
9 or by voluntary sale, merger or consolidation; nor shall title thereto either legal or
10 equitable, or any right, interest or property therein pass to or vest in any Person without
11 the prior written consent of the City, which consent shall not be unreasonably withheld.
12 Such consent shall not be deemed to waive any rights of the City to subsequently
13 enforce this provision, or to enforce any other provision of this Franchise.
14

15 (B) The Franchisee shall promptly notify the City of any actual or proposed sale,
16 change in, transfer of, or acquisition by any other party, of control of the Franchisee.
17 The word "control" as used herein is not limited to majority stock ownership but includes
18 actual working control in whatever manner exercised. Every change, transfer or
19 acquisition of control of the Franchisee shall make this Franchise subject to cancellation
20 unless and until the City shall have expressly consented in writing thereto. Such
21 consent shall not be deemed to waive any rights of the City to subsequently enforce
22 noncompliance issues relating to this Franchise.
23

24 (C) Prior to any such sale, transfer or change in control of the Cable System, the
25 Franchisee shall make a written request to the City for its approval of a sale or transfer
26 or change in control and shall furnish therewith all information required by law.
27

28 (D) In seeking the City's consent to any change in ownership or control, the
29 proposed transferee or new controlling Person shall indicate whether, it:
30

31 (1) Has ever been convicted, pleaded guilty or *nolo contendere*, or held
32 liable for acts involving deceit including any violation of federal, State or local law or
33 regulations or is currently under an indictment, investigation or complaint charging such
34 acts;
35

36 (2) Has ever had a judgment in an action for fraud, deceit or
37 misrepresentation entered against it by any court;
38

39 (3) Has pending any material legal claim, lawsuit or administrative
40 proceeding arising out of or involving a Cable System;
41

42 (4) Is financially solvent, by submitting financial data including financial
43 statements audited by a certified public accountant who may also be an officer of the
44 transferee or new controlling Person, along with any other data that the City may
45 reasonably require; and
46

47 (5) Has the financial, legal and technical capability to enable it to maintain
48 and operate the Cable System for the remaining term of the Franchise.
49

50 (6) In addition to the information required under paragraphs (1) through

1 (5) above, the proposed transferee or new controlling Person shall also provide the
2 information requested in paragraphs (1) through (3) of this section for every officer,
3 director, and managing or controlling shareholder, member, or trustee of such proposed
4 transferee or new controlling Person.
5

6 (E) The City shall act on the request within one hundred twenty (120) days of
7 the Franchisee's submission of a complete application with all information required by
8 FCC Form 394. Subject to the foregoing, if the City fails to render a final decision on
9 the request within one hundred twenty (120) days, such request shall be deemed
10 granted unless the requesting party and the City agree to an extension of time.
11

12 (F) Within thirty (30) days of any transfer, sale or change in control, if approved
13 or deemed approved by the City, the Franchisee shall file with the City a copy of the
14 deed, agreement, lease or other written instrument evidencing such sale or transfer of
15 ownership or change in control, certified and sworn to as correct by the Franchisee and
16 the transferee or new controlling Person. In case of a sale or transfer of ownership, the
17 transferee shall file its written acceptance agreeing to be bound by all of the provisions
18 of this Franchise, subject to applicable law. In the event of a change in control in which
19 the Franchisee is not replaced by another entity, the Franchisee will continue to be
20 bound by all of the provisions of this Franchise.
21

22 (G) In reviewing a request for sale or transfer or change in control, the City may
23 inquire into the legal, technical and financial qualifications of the prospective controlling
24 party or transferee, and the Franchisee shall assist the City in so inquiring.
25

26 (H) Notwithstanding anything to the contrary in this subsection, the prior
27 approval of the City shall not be required for any sale, assignment or transfer of the
28 Franchise or Cable System to an intra-company Affiliate; provided that the proposed
29 assignee or transferee must show financial responsibility as is satisfactory to the City
30 and must agree in writing to comply with all of the provisions of this Franchise. Further,
31 the Franchisee may pledge the assets of the Cable System for the purpose of financing
32 without the consent of the City; provided that such pledge of assets shall not impair the
33 Franchisee's responsibilities and capabilities to meet all of its obligations under the
34 provisions of this Franchise.
35

36 **Section 6. FRANCHISE FEE.**

37 (A) Payment to the City. The Franchisee shall pay the City a franchise fee in an
38 amount equal to five percent (5%) of Gross Revenues. Of the total franchise fee
39 received, forty percent (40%) shall be deposited in a special fund dedicated to the
40 purposes of funding renewal procedures and of developing community cable television
41 programming and access. The balance shall be deposited into the general fund.
42

43 (B) GAAP (General Acceptable Accounting Principles) applies. Records of Cable
44 System revenues and expenses shall be kept in accordance with GAAP.
45

46 (C) Not in lieu of any other assessments, tax or fee. The franchise fee is in
47 addition to all other generally applicable fees, assessments, taxes or payments that the
48 Franchisee may be required to pay under any federal, state, or local law, except as
49 required by 47 U.S.C. § 542.
50

1 (D) Payments. Franchise fees shall be paid quarterly commencing thirty days
2 after the end of each calendar quarter.

3
4 (E) No accord or satisfaction. In accordance with the appropriate statute of
5 limitations, no acceptance of any payment by the City required by this Franchise shall
6 be construed as a release or an accord and satisfaction of any claim the City may have
7 for further or additional sums payable as a franchise fee or for the performance of any
8 other obligation of the Franchisee.

9
10 (F) Initial/monitoring audits. No later than one hundred eighty (180) days
11 following the execution of this Franchise, the City shall conduct an independent audit of
12 the Franchisee's records reasonably related to the enforcement of this Franchise. If the
13 audit shows that franchise fee payments have been underpaid by five percent (5%) or
14 more, the Franchisee shall pay the total cost of the audit, such cost not to exceed five
15 thousand dollars (\$5,000) along with all unpaid franchise fee payments shown thereby,
16 within forty-five (45) days following completion of the audit. Thereafter, the City shall
17 have the right to conduct such audits as the City deems necessary, though no more
18 frequently than once per calendar year, upon thirty (30) days' prior written notice to the
19 Franchisee. Notwithstanding the foregoing, the City may conduct such an audit ninety
20 (90) days or more following any audit that shows an underpayment of franchise fee
21 payments by five percent (5%) or more.

22
23 (G) Eight Year Audit. Within twelve (12) months prior to the expiration of the
24 initial term of this Franchise, the City shall conduct an independent audit of the
25 Franchisee's records reasonably related to the enforcement of this Franchise. If the
26 audit shows that franchise fee payments have been underpaid by five percent (5%) or
27 more, the Franchisee shall pay the total cost of the audit, such cost not to exceed five
28 thousand dollars (\$5,000), along with all unpaid franchise fee payments shown thereby,
29 within ninety (90) days following completion of the audit. If the Franchisee cures the
30 underpayment to the satisfaction of the City within forty-five (45) days following
31 completion of the audit, this Franchise shall extend for an additional two (2) year period.
32 If the Franchisee fails to cure such underpayment to the satisfaction of the City within
33 forty-five (45) days following completion of the audit, the City shall have the right to
34 terminate this Franchise by thirty (30) days' prior written notice to the Franchisee. If the
35 City does not exercise its right to so terminate within ninety (90) days following
36 completion of the audit, this Franchise shall extend for an additional two (2) year period.

37
38 (H) Consumer disclosure. The amount of a subscriber's total bill assessed as a
39 franchise fee may be listed as a separate line item.

40
41 **Section 7. CONSTRUCTION.**

42 (A) All work subject to City laws and regulations. The construction, operation,
43 and repair of the Cable System shall be performed in compliance with all laws,
44 ordinances, resolutions, departmental rules, regulations, written policies, and practices
45 affecting such system. Persons engaged in the construction, operation, or repair of the
46 Cable System shall exercise reasonable care in the performance of all their activities
47 and shall use commonly accepted methods and devices for preventing failures and
48 accidents that are likely to cause damage, injury, or nuisance to the public or to
49 property.

1 (B) Permits. All work performed will be performed in strict accordance with the
2 conditions of the appropriate City permits. City will not unreasonably withhold granting
3 of permits. Upon order of the City, any work and/or construction undertaken that is not
4 completed in compliance with the City's requirements, or which is installed without
5 obtaining necessary permits and approvals shall be removed in accordance with the
6 reasonable time line set forth by the City, unless the Franchisee receives the necessary
7 permits and approvals and/or corrects the non-compliant work or construction.
8

9 (C) Safety codes. Without limiting the foregoing, the installation, construction,
10 operation and maintenance of the Cable System shall be in accordance with the
11 requirements of the National Electrical Safety Code of the American Insurance
12 Association (successor to National Board of Fire Underwriters) and all applicable laws,
13 ordinances, rules, regulations of the state and of the City affecting electrical installations
14 and buildings in effect at the time of such installation. All structures and all lines,
15 equipment, and connections in, over, under, and upon the streets shall at all times be
16 kept and maintained in a safe, suitable, substantial condition, and in good order and
17 repair.
18

19 (D) Installations, excavations, and restorations. The City shall have the right to
20 regulate the time, manner and location of facilities in the Public Rights-of-Way. Without
21 limiting the foregoing, the City may require the Franchisee, where unreasonable delay
22 in the Franchisee's work will not result, to coordinate its work with work performed by
23 others in the Public Rights-of-Way so that interference with the use of the Public Rights-
24 of-Way by others, including others that may be installing cable systems, may be
25 minimized. The City may require a person using the Public Rights-of-Way to cooperate
26 with others through joint trenching and other arrangements to minimize adverse impacts
27 on the Public Rights-of-Way, subject to the Franchisee's right to not be unduly delayed
28 in its emergency or planned work. The Franchisee shall have the right to excavate in,
29 occupy, and use all Public Rights-of-Way and easements for the purpose of installing,
30 erecting, constructing, repairing, maintaining, removing, relocating, and operating the
31 Cable System after obtaining any and all appropriate permits from the City.
32

33 (E) Employee Identification. Any and all employees performing work on behalf
34 of the Franchisee shall possess at all times a photo identification badge including a
35 telephone number for verification. The Franchisee's vehicles shall also be marked with
36 applicable identification.
37

38 (F) Clean-up and restoration. After any excavation shall be made and after work
39 is completed, the Franchisee, at the Franchisee's expense, shall as soon as
40 practicable, weather permitting, remove all surplus material, and restore the portion of
41 the Public Rights-of-Way to a condition that reasonably meets or exceeds the pre-
42 excavation condition of such Rights-of-Way, subject to inspection by the City. Any
43 other affected public or private property shall be restored to a condition reasonably as
44 good as that which existed prior to the work. If the Franchisee fails to restore promptly
45 the affected property, including reseeding, then following written notice to the
46 Franchisee, and reasonable opportunity to cure, the City may make the restoration in a
47 manner satisfactory to the City, and all costs incurred for such restoration, whether
48 done with the City work forces and equipment or otherwise shall be paid by the
49 Franchisee.
50

1 (G) Use of existing poles and conduit.

2 (1) The Franchisee shall utilize existing poles and conduit wherever
3 possible. Additional poles may not be installed in the Right-of-Way without the
4 permission of the City

5 (2) In areas where either electric or telephone utility wiring is aerial, the
6 Franchisee may install aerial cable, except when a property owner or resident requests
7 underground installation and agrees to bear the additional cost in excess of aerial
8 installation.

9 (3) In areas where electric and telephone lines or wires are installed
10 underground at the time of Cable System construction, or when all such wiring is
11 subsequently placed underground, all Cable System lines shall also be placed
12 underground with other wireline service at no expense to the City or Subscribers unless
13 funding is generally available for such relocation to all users of the Public Rights-of-
14 Way. All Cable System equipment, including, but not limited to, pedestals and power
15 supplies, must be placed in accordance with the City's applicable code requirements
16 and rules. New cable drops which are intended to be underground shall be buried
17 within fourteen (14) business days of placement, weather and ground permitting.

18 (4) In the event the Franchisee cannot obtain the necessary poles and
19 related facilities pursuant to a pole attachment agreement, and only in such event, then
20 it shall be lawful for the Franchisee to make all needed excavations in the Rights-of-
21 Way for the purpose of placing, erecting, laying, maintaining, repairing, and removing
22 poles, supports for wires and conductors, and any other facility needed for the
23 maintenance or extension of the Franchisee's Cable System. All poles of the
24 Franchisee shall be located as designated by the proper City authorities.

25 (5) This Franchise does not grant, give or convey to the Franchisee the
26 right or privilege to install its facilities in any manner on specific utility poles or
27 equipment.

28 (6) The Franchisee and the City recognize that situations may occur in the
29 future where the City may desire to place its own cable or conduit. The Franchisee
30 agrees to cooperate with the City in any construction by the Franchisee that involves
31 trenching or boring, provided that the City has first notified the Franchisee in some
32 manner that it is interested in sharing the trenches or bores in the area where the
33 Franchisee's construction is occurring. The Franchisee shall allow the City to lay City
34 cables and conduits in the Franchisee's trenches and bores, provided that the City
35 shares in the cost of the trenching and boring on the same terms and conditions as the
36 Franchisee, and that the City agrees not to use such cables and conduits laid in the
37 Franchisee's trenches and bores to provide commercial services competing with those
38 of the Franchisee under this Franchise. The City shall be responsible for maintaining its
39 respective cables and conduits buried in the Franchisee's trenches and bores under
40 this paragraph.

41
42 (H) Publicizing proposed construction work. The Franchisee will publicize any
43 initial build or any substantial rebuild or upgrade of its Cable System cable in each
44 affected neighborhood before commencing that work by notifying those persons whose
45 property is within 300 feet of the work in at least two of the following ways:

46 (1) Telephone;

47 (2) In person;

48 (3) By mail;

49 (4) By distributing flyers to residences; or

50 (5) By publication in local newspapers or by television public service

1 announcement.

2
3 (I) Relocation.

4 (1) The Franchisee shall, within a reasonable time specified by the City,
5 protect, support, temporarily disconnect, relocate, or remove any of its property when
6 requested by the City by reason of traffic conditions; public safety; Public Right-of-Way
7 construction and repair (including re-grading, resurfacing or widening); Public Right-of-
8 Way vacation; construction, installation or repair of sewers, drains, water pipes, power
9 lines, signal lines, tracks, or any other type of government-owned system or utility,
10 public work, public facility, or improvement. Collectively, such matters are referred to
11 below as the "public work." If funds are available to any person using the Public Rights-
12 of-Way for the purpose of defraying the cost of any of the foregoing, the City shall
13 reimburse the Franchisee in the same manner in which other persons affected by the
14 requirement are reimbursed. If the funds are controlled by another governmental entity,
15 the City shall make application for such funds on behalf of the Franchisee.

16 (2) Nothing herein shall be construed to reduce or otherwise affect any
17 right the Franchisee has to recover (from a party other than the City), seek contribution
18 for or to offset the costs of complying with the requirements of this provision.

19
20 (J) Removal or Modification of Facilities. Whenever the Franchisee intends to
21 discontinue using any facility within the Public Rights-of-Way, the Franchisee shall
22 notify the City of its intent regarding such discontinuance. The Franchisee may remove
23 the facility or request that the City permit it to remain in place. Notwithstanding the
24 Franchisee's request that any such facility remain in place, the City may require the
25 Franchisee to remove the facility from the Right-of-Way and/or modify the facility to
26 protect the public health, welfare, safety, and convenience, or otherwise serve the
27 public interest. The Franchisee shall use its best efforts to complete such removal or
28 modification in accordance with a schedule set by the City. Until such time as the
29 Franchisee removes or modifies the facility as directed by the City, or until the rights to
30 and responsibility for the facility are accepted by another Person having authority to
31 construct and maintain such facility, the Franchisee shall be responsible for all
32 necessary repairs and relocations of the facility, as well as maintenance of the Public
33 Right-of-Way, in the same manner and degree as if the facility were in active use, and
34 the Franchisee shall bear all liability for such facility.

35
36 (K) Moving of buildings. Whenever it becomes necessary to temporarily
37 rearrange, remove, lower, or raise the aerial cables or wires or other apparatus of the
38 Franchisee to permit the passage of any building, machinery, or other object, the
39 Franchisee shall perform such rearrangement upon receipt of payment for the
40 estimated costs incurred by the Franchisee in making such rearrangements, and
41 provided that the Franchisee received written notice at least 30 days in advance from
42 the person or persons desiring to move said building, machinery, or other objects. The
43 written notice shall detail the route of movement of the building, machinery, or other
44 object. The costs incurred by the Franchisee in making such rearrangements of its
45 aerial plant will be borne by the person or persons seeking such rearrangement, unless
46 the aerial plant is placed or maintained in violation of the applicable rules of any local,
47 state, or federal regulatory agency and thereby unlawfully interferes with the movement.

48
49 (L) Restoration of property. The Franchisee shall reconstruct, replace, or restore
50 to its previous condition in a timely fashion that portion of any street, alley, or public way

1 or place; and any water, sewer, sanitary sewer, storm drainage, traffic signalization or
2 other facility of the City, disturbed or damaged by the Franchisee, to a condition
3 reasonably acceptable to the City consistent with reasonable standards of safety and
4 appearance as required by generally applicable law and codes adopted pursuant to
5 exercise of the City's police powers.

6
7 (M) Repairs and Reimbursement. The Franchisee shall properly replace and
8 repair the surface, base, and landscape treatment of any Public Right-of-Way that may
9 be excavated or damaged by reason of the erection, construction, maintenance, or
10 repair of the Franchisee's facilities within a reasonable time after completion of the work
11 in accordance with existing standards of the City in effect at the time of the work. The
12 Franchisee shall give to the City twenty-four (24) hours' notice prior to undertaking any
13 repair, replacement, or extension of its service on Public Rights-of-Way which require a
14 City permit. Upon failure of the Franchisee to perform any such repair or replacement
15 work, and after ten days' notice in writing shall have been given by the City's
16 Department of Public Infrastructure to the Franchisee, the City may repair such portion
17 of the Public Right-of-Way as may have been disturbed by the Franchisee, its
18 contractors or agents, and upon receipt of an itemized bill from the City, the Franchisee
19 will promptly reimburse the City for all reasonable costs so incurred. Notwithstanding
20 the foregoing, if the City determines that the failure of the Franchisee to properly repair
21 or restore the Public Right-of-Way constitutes a safety hazard to the public, the City
22 may undertake emergency repairs and restoration efforts. The Franchisee shall
23 promptly reimburse the City for all reasonable costs incurred by the City. Should the
24 City reasonably determine, within three (3) years for the surface or base, and within
25 ninety (90) days for landscape treatment, from the date of any restoration performed by
26 the Franchisee, that such surface, base, or landscape treatment requires additional
27 restoration under this section, the Franchisee shall perform such additional restoration
28 work to the reasonable satisfaction of the City within a reasonable period of time
29 following notice from the City.

30
31 (N) Trimming of Trees. The Franchisee may, upon reasonable notification to the
32 City, trim trees above ground which infringe upon easements, rights of way or streets of
33 the City to prevent the trees from coming into contact with the Cable System, and the
34 City, at its option may do such trimming at the expense of the Franchisee.

35
36 (O) Supplying maps. The Franchisee shall maintain on file all available maps,
37 operational data, and reports pertaining to its operations in the City. Upon request of
38 the City, the Franchisee shall furnish to the City, as soon as practicable without charge,
39 current maps showing the location and dimension of any facilities within the Franchise
40 Area. The Franchisee supplying maps under this provision may excise proprietary
41 information so long as the location and dimension of any facilities, and their character
42 (e.g. pole, equipment cabinet, fiber optic cable, power line) are clearly shown.

43
44 (P) Failure to perform. If the Franchisee should fail to perform any work required
45 under this Section after written notice and reasonable opportunity to cure, the City may
46 cause work to be performed, and may bill the Franchisee therefore, or draw upon any
47 security fund or bond to recover its costs. If the City bills the Franchisee, the
48 Franchisee shall pay the amount billed within 30 days of receipt of the bill.

49
50 (Q) Inspection of Construction and Facilities. The City may inspect any of the

1 Franchisee's facilities, equipment or construction in the Public Right-of-Way at any time
2 during normal business hours upon at least twenty-four (24) hours notice, or, in case of
3 an emergency, at any time, upon demand without prior notice. If an unsafe condition is
4 found to exist, the City, in addition to taking any other action permitted under applicable
5 law, may order the Franchisee, in writing, to make the necessary repairs and alterations
6 specified therein forthwith to correct the unsafe condition by a time the City establishes.
7 The City has the right to correct, inspect, administer and repair the unsafe condition if
8 the Franchisee fails to do so, and to charge the Franchisee therefor.

9
10 **Section 8. CONSTRUCTION PROVISIONS.**

11 (A) Construction standards. The Franchisee will comply with all lawful and
12 generally applicable construction standards utilized by the City. The construction,
13 operation, and repair of the Cable System will be in accord with all applicable law. The
14 construction, operation, and maintenance of the Cable System shall be performed by
15 experienced and properly trained properly and licensed maintenance and construction
16 personnel.

17
18 (B) Standards following completion of upgrade. Upon completion of any Cable
19 System upgrade, the Cable System shall:

20 (1) Utilize facilities and equipment generally comparable to that used in
21 other high-quality, reliable cable systems of similar design, including commercially
22 reasonable backup power resources.

23 (2) Be two-way activated and shall include the facilities and equipment
24 (except customer premises equipment) required to support broadband interactive
25 services, such as Internet services.

26 (3) Provide reliable service and possess auto-start back-up power at the
27 headend and elsewhere reasonably necessary (consistent with accepted industry
28 standards and the system design) to avoid or minimize service interruptions.

29
30 **Section 9. RESIDENTIAL SERVICE.**

31 (A) Mandatory Line Extension. Within the Franchise Area, the Franchisee shall,
32 upon written request by an un-served potential subscriber in the area, extend service to
33 any dwelling unit not already passed by the Cable System in the Franchise Area, in
34 which the density of dwelling units is at least thirty (30) dwelling units per cable mile.
35 The Franchisee may not charge the Subscriber the cost of extending the Cable System
36 plant to a point where the dwelling unit can be served by a standard one hundred fifty
37 (150) foot drop.

38
39 (B) Cost-Sharing: The Franchisee shall offer a cost-sharing arrangement to
40 residents requesting service in a low density area whereby the Franchisee and the
41 requesting subscriber will each bear their proportionate share of construction costs to
42 the point where the dwelling unit can be served by a standard one hundred fifty (150)
43 foot drop. The Franchisee's share will be the cost of construction multiplied by a
44 fraction, the numerator of which will be the number of dwelling units per mile of cable
45 plant in the area where the extension will occur, and the denominator of which will be
46 thirty (30). The requesting subscribers shall bear the remaining cost on a pro-rata
47 basis.

48 (C) New Housing Developments. Nothing in this Agreement shall prohibit the
49 City, the Franchisee, or any other person from entering into an agreement whereby
50 entire new housing developments may be pre-wired for efficient future expansion of

1 cable service.

2
3 **Section 10. SYSTEM OPERATIONS.**

4 (A) Technical standards. The cable system must meet or exceed the technical
5 performance standards set forth in 47 C.F.R. § 76.601 and any other applicable
6 standards, or any successor or amended rules provided that, nothing in this provision is
7 intended to permit the City to exercise any authority that it is prohibited from exercising
8 under applicable federal law.

9
10 (B) Future upgrades. It is the Franchisee's responsibility to make such
11 commercially practicable improvements to its Cable System throughout the Franchise
12 term to ensure that Subscribers are able to obtain advanced Cable Service, and so that
13 services can be added throughout the franchise term.

14
15 (C) System maintenance.

16 (1) The Franchisee may intentionally interrupt service on the Cable
17 System only for good cause and for the shortest time possible and, except in
18 emergency situations or to the extent necessary to fix the affected Subscriber's service
19 problems, only after a minimum of forty-eight (48) hours' prior notice to Subscribers and
20 the City of the anticipated service interruption; provided, however, that there shall be no
21 minimum prior notice period, for planned maintenance that:

22 (a) Does not require more than two (2) hours' interruption of
23 service; and

24 (b) Occurs between the hours of 1:00 a.m. and 6:00 a.m.

25
26 (D) FCC-mandated testing.

27 (1) The Franchisee shall, at its expense, perform all tests on its Cable System
28 required by the FCC and shall maintain written records of its test results. Copies of such
29 test results will be provided to the City upon request.

30 (2) All required technical performance tests may be witnessed by representatives
31 of the City. Upon request, the Franchisee will notify the City before any required
32 technical proof-of-performance testing occurs.

33 (3) The Franchisee shall promptly take such measures as are necessary to
34 correct any performance deficiencies fully and to prevent their recurrence as far as
35 practicable.

36
37 (E) Emergency alert system.

38 (1) The Franchisee shall shall comply in all respects with all applicable
39 laws and FCC rules and regulations regarding the installation, maintenance and testing
40 of an Emergency Alert System ("EAS"), and all reporting obligations therefor, as well
41 as all applicable rules and procedures adopted by the New Mexico State Emergency
42 Communicaitons Committee and Local Area Emergency Communicaitons Committee
43 The Franchisee will advise the City of the EAS testing schedule, and the City may be
44 present for such tests.

45 (2) The City shall permit only its appropriately trained and authorized
46 persons to operate the EAS equipment, and only when authorized to do so by
47 applicable laws, rules and regulations, and shall take reasonable precautions to ensure
48 compliance with such laws, rules and regulations and to prevent any use of the Cable
49 System in any manner not in compliance therewith or in any inappropriate manner.

1 (F) Standby Power. The Franchisee shall provide standby power generating
2 capacity at the System Headend capable of providing at least twelve (12) hours of
3 emergency operation.
4

5 (G) Complaints. Any service complaints from subscribers shall be investigated
6 within twenty-four (24) hours of receipt of such complaint. Any service complaint shall
7 be resolved within seventy-two (72) hours. The Franchisee shall keep a maintenance
8 service log which will indicate the nature of each service complaint, the date and time it
9 was received, the disposition of said complaint and the time and date thereof. This log
10 shall be maintained for two (2) years and shall be made available for periodic inspection
11 by the City.
12

13 **Section 11. FACILITIES FOR PEG USE.**

14 (A) Generally. During the Franchise term and subject to federal requirements,
15 the Franchisee shall provide up to one public access channel, one education access
16 channel and one government access channel (collectively "PEG Channels") on the
17 lowest level of service made available to any subscriber or alternatively, on the level of
18 service mutually agreed upon. To the extent that each channel is not fully used, such
19 access channel may also be used for other broadcast and nonbroadcast services
20 except that at least one channel shall be maintained exclusively for the presentation of
21 access programming.
22

23 (B) Management and Allocation of Channels. The City will have exclusive control
24 over the management of the PEG Channels. The City may designate Designated
25 Access Providers to manage on its behalf. Nothing herein shall prevent the Designated
26 Access Provider from allowing PEG capacity designated for a particular PEG use to be
27 used for other PEG purposes. It is the responsibility of the PEG channel operators to
28 timely provide in the appropriate format information that it wishes to have displayed on
29 the menu. The Franchisee will have no ability to censor (other than for obscenity or any
30 future federally authorized reason) and therefore no liability based on the content of the
31 programming.
32

33 (C) Analog/Digital Channels.

34 (1) The Franchisee agrees to provide up to three PEG Channels for the
35 City's use in whatever combination of Public Access, Educational and Governmental
36 use the City determines best. The City may allocate programming from all three
37 categories of PEG in a single Channel at its discretion. The Channels may be analog or
38 digital at the City's choice. The City acknowledges that at the time of the adoption of
39 this Franchise, the Franchisee is providing two (2) channels for the foregoing purposes.
40 The Franchisee shall provide a third PEG channel at such time as at least forty percent
41 (40%) of available airtime on the second PEG channel now provided is used to air
42 original programming.
43

44 (2) When the lowest level of Cable Service is delivered in digital format,
45 the Franchisee's obligation to provide any PEG channels on its analog lineup shall end,
46 and the PEG channels at that time being delivered in analog format will be replaced by
47 an equal number of digital channels. The Franchisee shall not be required to supply
48 digital decoders to any Subscriber not otherwise authorized to receive digital service
49 from the Franchisee.
50

1 (3) Conversion to Digital. The cost of the equipment required to provide a
2 digital PEG signal feed, and to compress the digital PEG signals to deliver them to
3 Subscribers, will be borne by the City if the City opts to use digital PEG Channels
4 before all other basic service programming is delivered in a digital format. In this
5 instance, the City will also be responsible for digital compression costs. It may
6 implement any digital compression ratio compatible with the technical requirements of
7 the Franchisee's Cable System.

8
9 (D) Limitations on Use. PEG channels shall not be used to cablecast commercial
10 programming, paid advertising, or promotional material unrelated to the specific
11 programming purpose. PEG Channels may not be leased or assigned to third parties.
12 The parties do not intend to limit sponsorship announcements comparable to those that
13 might be carried on a noncommercial broadcast (e.g., PBS) station, or to prevent
14 Schools from charging course fees, and then delivering the course via the PEG
15 Channels; or to solicit financial support for the provision of PEG Access by Designated
16 Providers and for charitable, educational or governmental purposes.

17
18 (E) Cable outlets for educational and government facilities.

19 (1) The Franchisee shall, without charge, and except where limited herein,
20 provide upon written request the following to non-residential public elementary and
21 secondary schools, the City libraries, the City fire stations, police buildings and the City
22 municipal government buildings within the Franchisee's Franchise Area not requiring a
23 line extension or a drop in excess of 150 feet:

24
25 (a) One (1) service drop and outlet;

26 (b) Basic Cable Service and the channels on the most widely
27 subscribed to satellite tier offered on the Cable System (except where programming
28 related contracts preclude it) to the outlet provided above in (a).

29
30 (2) The City or school may itself extend video service lines from the
31 Franchise provided drop to additional City or school outlets within the same building,
32 but service will not be provided to any residential quarters or private businesses. The
33 City shall comply with all applicable FCC rules and regulations in the extension,
34 installation, and maintenance of such lines and outlets, and shall be responsible for
35 signal leakage or degradation of signal quality caused by the installation and/or
36 maintenance of any line extension or additional outlet caused by the City or its
37 contractors in the extension and/or installation of such lines or outlets. The Franchisee
38 also will install such wiring upon request, at its regular hourly service charge for labor
39 and costs of materials. If a location adds multiple outlets, it is responsible and must pay
40 for any additional equipment and facilities required to make them operational.

41
42 (3) The City shall take reasonable precautions to prevent any use of the
43 Franchisee's Cable System in any manner that results in the inappropriate use thereof
44 or any loss or damage to the Cable System. The City shall hold the Franchisee
45 harmless from any and all liability or claims arising out of the provision and use of Cable
46 Service required by this subsection, including signal leakage fines. The Franchisee
47 shall not be required to provide an outlet to any buildings where a non-standard
48 Installation is required, unless the City or building owner/occupant agrees to pay the
49 incremental cost of any necessary Cable System extension and/or non-standard
50 Installation and, notwithstanding anything in this Franchise to the contrary, agrees to

1 hold the Franchisee harmless from any liability arising from such non-standard
2 Installation.

3
4 (F) Origination of programming for the services described in this Section shall
5 remain in the Franchise Area.

6
7 **Section 12. OPERATION AND REPORTING PROVISIONS.**

8 (A) Right to inspect and copy. The City shall have the right to inspect and copy
9 records: related in whole or in part to the construction, operation or repair of the Cable
10 System and reasonably necessary for the City to monitor compliance with the terms of
11 this Ordinance or applicable law; or reasonably necessary to the exercise of any right or
12 duty of the City under the same. The Franchisee is responsible for maintaining control
13 over records related in whole or in part to the construction, operation, or repair of the
14 Cable System. Other than records containing confidential financial and/or proprietary
15 information, the Franchisee shall produce these records upon the City's request for the
16 City's inspection within the limits of the City. Records must be maintained for a period
17 of six (6) years, except that the Franchisee may specify a shorter period for certain
18 categories of voluminous records where the information contained therein can be
19 derived simply from other materials. The City agrees it will not audit more than once
20 every two years.

21
22 (B) Reports. Unless the City specifically waives the requirement in writing,
23 the Franchisee shall at all times maintain:

24 (1) Records of all written complaints received, their nature and resolution.

25 The term "complaints" refers to complaints about any aspect of the Franchisee's
26 construction, operations or repair activities;

27 (2) Records of outages known to the Franchisee, their cause and
28 duration;

29 (3) Records of service calls for repair and maintenance indicating the
30 nature of the call for service, the date and time service was requested, the date of
31 acknowledgment and date and time service was scheduled (if it was scheduled), and
32 the date and time service was provided, and (if different) the date and time the problem
33 was solved;

34 (4) Records of installation/reconnection and requests for service
35 extension, indicating date of request, date of acknowledgment, and the date and time
36 service was extended;

37 (5) Records sufficient to show whether the Franchisee has complied with
38 each FCC customer service standard that applies to it.

39
40 (C) Retention of records; relation to privacy rights. Nothing in this Section shall
41 be read to require the Franchisee to violate 47 U.S.C. § 551 or other applicable law
42 governing privacy. The Franchisee shall be responsible for redacting any data that state
43 or federal law prevents it from providing to the City. Records shall be kept for at least
44 six (6) years, except that service call logs may be retained for three (3) years, so long
45 as the information contained therein is reflected in other documents.

46
47 **Section 13. INSURANCE; SURETY; INDEMNIFICATION.**

48 (A) Insurance.

49 (1) General conditions. Except as this Franchise may otherwise provide,
50 the Franchisee shall procure and maintain in full force and effect during the life of its

1 Franchise, such insurance as is required in this Section below. Policies of insurance
2 shall be written by companies authorized to write such insurance in New Mexico, and
3 they shall be in a form reasonably satisfactory to the City and properly filed and
4 approved by the Superintendent of Insurance, State of New Mexico. The Franchisee
5 shall furnish the City a minimum of three copies of certificates of required insurance. All
6 certificates of insurance (or policies) shall provide that 30 days' written notice be given
7 to the City before a policy is cancelled, materially changed or not renewed. Various
8 types of required insurance may be written in one or more policies. With respect to all
9 coverages required other than workers' compensation, the City shall be named an
10 additional insured. All coverages shall be primary with respect to operations provided.
11 The certificates of insurance and endorsements for each policy shall be signed by a
12 person authorized by that insurer to bind coverage on its behalf. Certificates and other
13 required proofs shall be filed with the City within thirty (30) days of the issuance of this
14 Franchise, once a year thereafter, and whenever there is any change in coverage.

15
16 (B) No work without insurance. The Franchisee (or those acting on its behalf)
17 shall not commence construction or operation of the Cable System without first
18 obtaining insurance in amounts and of a type satisfactory to the City. The required
19 insurance must be obtained and maintained for the entire period the Franchisee has
20 facilities in the Public Rights-of-Way or on public property. If the Franchisee, its
21 contractors, or subcontractors do not have the required insurance, the City may order
22 such persons to stop operations until the insurance is obtained and approved.

23
24 (C) Work of subcontractors. If any part of the construction, operation or repair
25 of the Cable System is subcontracted, the Franchisee shall:

26 (1) Include any and all subcontractors in its insurance policies; or

27
28 (2) Require the subcontractor to secure insurance to protect itself against
29 all hazards enumerated herein which are not covered by the Franchisee's policies.

30
31 (D) Approval of insurance. Neither approval nor failure to disapprove certificates,
32 policies or the insurance by the City shall relieve the Franchisee or any sub-Franchisee
33 of full responsibility to maintain the required insurance in full force and effect.

34
35 (E) Commercial general liability insurance including automobile.

36
37 (1) The Franchisee shall procure and maintain during the life of this
38 Franchise a comprehensive commercial general liability and automobile liability
39 insurance policy with liability limits in amounts not less than One Million Dollars
40 (\$1,000,000) combined single limit of liability for bodily injury, including death, and
41 property damage in any one occurrence and in the aggregate. Said policies or
42 insurance must include coverage for all operations performed for the City by the
43 Franchisee, including, but not limited to, coverage for collapse, explosion, and
44 underground liability coverage, coverage for the user of all owned, non-owned, hired
45 automobiles, vehicles, and other equipment both on and off work, and contractual
46 liability coverage which shall specifically insure the indemnification provisions of this
47 Ordinance and any Franchise.

48
49 (2) The above requirements shall include, but shall not be limited to,
50 protection against:

1
2 (a) Damage to, or destruction of, public and private property
3 including telephone conduit, telegraph conduit, power conduit, telephone signal cable,
4 fiber optics cable, television cable, computer cable, fire alarm circuits, gas mains, gas
5 service connections, sanitary sewers, sewer, house or building connections, water
6 mains, water service connections, steam lines, petroleum products pipe lines, storm
7 drains, storm inlet lines, including all appurtenances thereto while located below the
8 surface of the ground, including injury or death, to person or persons caused by the
9 Franchisee's operations, including blasting and trenching-backfilling-tamping with or
10 without the use of mechanical equipment; and
11

12 (b) The collapse of, or structural damage to, a building, house or
13 structure, including power, telephone, telegraph, fire alarm, and street-light poles, curb
14 and gutter and sidewalk, on public or private property, and destruction of, or damage to,
15 other public and private property resulting therefrom, including injury or death to person
16 or persons caused by the Franchisee, including but not limited to as a result of the
17 Franchisee's operations in the removal of other buildings, structures, including their
18 supports, trees and utility poles, or by excavation, including blasting, and trenching-
19 backfilling-tamping with or without use of mechanical equipment. "Other public and
20 private property" as used herein shall include lawns, plants, flowers, trees, fences,
21 yards, walls, etc.
22

23 (F) The City's protective public liability insurance.
24

25 (1) The Franchisee shall procure and maintain during the life of a
26 Franchise, a City's protective public liability insurance policy with liability limits in
27 amounts not less than One Million Dollars (\$1,000,000) combined single limit of liability
28 for bodily injury, including death, and property damage in any one occurrence and in the
29 aggregate, or the Franchisee may provide the City with evidence of insurance with
30 excess limits in amounts not less than One Million Dollars (\$1,000,000).
31

32 (2) The policy will be written with the City as the named additional insured
33 and will provide coverage for the City and its employees while acting within the scope of
34 their duties against all claims arising out of or in connection with the work to be
35 performed.
36

37 (3) In lieu of Section 13 F (1) and (2), the City may accept equivalent
38 coverage if approved by the City Manager.
39

40 (G) Workers' compensation insurance. The Franchisee shall comply with the
41 provisions of the Workers' Compensation Act, the Subsequent Injury Act, and the New
42 Mexico Occupational Disease Disablement Law. The Franchisee shall procure and
43 maintain during the life of a Franchise, complete workers' and employer's liability
44 insurance in accordance with New Mexico law and regulations. Such insurance shall
45 include coverage permitted under Section 52-1-10 NMSA 1978, for safety devices.
46 With respect to workers' compensation insurance, if the Franchisee elects to be self-
47 insured, it shall comply with the applicable requirements of law. If any portion of the
48 construction, operation or repair of the Cable System is to be subcontracted, The
49 Franchisee shall require the subcontractor similarly to provide such coverage (or qualify
50 as a self insured) for all latter's employees to be engaged in such work. The

1 Franchisee shall save harmless the City, its officers, agents and employees from any
2 claims or actions occasioned by failure of the Franchisee to comply with the provisions
3 of this subparagraph. It is agreed that with respect to all workers' compensation
4 insurance, the Franchisee and its insurer shall waive any right of subrogation it may
5 acquire against the City, its officers, agents and employees by reason of any payment
6 made on account of injury, including death resulting therefrom, sustained by any
7 employee arising out of the performance of a Franchise, unless caused by the gross
8 negligence or malfeasance of the City, its officers, agents and employees.

9
10 (H) Alterations in limits. This Franchise shall be interpreted to permit the City to
11 require the Franchisee to increase its insurance limits, or obtain additional types of
12 insurance should the City determine in good faith that there are significant increased
13 risks to the City or its citizens based on the Franchisee's actions, by such time as
14 reasonably may be specified by the City.

15
16 (I) Ratings. The Franchisee's insurer shall have no less than an "A-"
17 policyholder's rating and a financial rating of at least Class XI in accordance with the
18 Best's rating current at the time purchased, unless specifically waived in writing by the
19 City Manager.

20
21 (J) No contribution. Any insurance or self insurance maintained by the City shall
22 be excess of the Franchisee's insurance and shall not contribute with it.

23
24 (K) The insurance requirements are material terms of this Franchise and cannot
25 be changed without the mutual agreement of the City and the Franchisee. The
26 Franchisee shall have insurance in place as herein required by the effective date of this
27 Franchise, and shall, upon request, provide proof of such insurance reasonably
28 satisfactory to the City prior to the effective date of the Franchise grant.

29
30 (1) Indemnification. To the extent permitted by applicable law, the
31 Franchisee agrees to indemnify and hold harmless the City, its trustees, elected and
32 appointed officers, agents, and employees, from and against any and all claims,
33 demands, or causes of action of any kind or nature not resulting from the actions of the
34 City, its trustees, elected and appointed officers, agents and employees, and the
35 resulting losses, costs, expenses, reasonable attorneys' fees, liabilities, damages,
36 orders, judgments, or decrees sustained by the City or any third party arising out of, or
37 by reason of, or resulting from or of the acts, errors, or omissions of the cable
38 communications system operator, or its agents, independent contractors or employees
39 related to or in any way arising out of the construction, operation or repair of the
40 system, the conduct of the Franchisee's business in the City, or the Franchisee's
41 enjoyment or exercise of its franchise.

42
43 (2) The City will notify the Franchisee in writing of its duty to indemnify in
44 any case subject to the indemnity in which the Franchisee is not a named defendant or
45 plaintiff. The Franchisee will employ competent counsel, reasonably acceptable to the
46 City Attorney.

47
48 **Section 14. CONTINUITY OF SERVICE.**

49 (A) It is the right of each subscriber in the Franchisee's Franchise Area to receive
50 all available Cable Service offered by the Franchisee as long as the subscriber's

1 financial and other obligations to the Franchisee are satisfied.

2
3 B) The Franchisee shall make its best efforts to provide all Subscribers with
4 continuous uninterrupted Cable Service. At the City's request, the Franchisee shall
5 operate its system for a temporary period (the "transition period") following the
6 termination of its franchise or any transfer as necessary to maintain Cable Service to
7 subscribers, and shall cooperate with the City to assure an orderly transition from it to
8 another entity. The transition period shall be no longer than the reasonable period
9 required to select another entity and in no event shall be longer than twelve (12)
10 months, unless extended by mutual consent of the Franchisee and the City. During the
11 transition period, the Franchisee will continue to be obligated to comply with the terms
12 and conditions of this franchise and applicable laws and regulations, and will be
13 deemed to have the necessary authorization required from the City to enable it to
14 provide Cable Service.

15
16 (C) If the Franchisee abandons its Cable System during the franchise term or
17 any transition period, or fails to operate its Cable System in accordance with the terms
18 set forth in Section 13 above, the City, at its option, may operate the Cable System or
19 designate another entity to operate the Cable System temporarily until the Franchisee
20 agrees to restore and restores continuous Cable Service in compliance with the
21 franchise until the franchise is revoked and a new entity selected by the City is
22 providing Cable Service.

23
24 (D) The City shall be entitled to exercise its rights under Section 13 if the:

25
26 (1) The Franchisee fails to provide Cable Service in accordance with its
27 franchise over a substantial portion of the Franchise Area for ninety-six (96)
28 consecutive hours, unless such failure is due to force majeure or the City authorizes a
29 longer interruption of service; or

30
31 (2) The Franchisee, for any period, willfully and without cause refuses to
32 provide Cable Service in accordance with its franchise over a substantial portion of the
33 Franchise Area.

34
35 (E) Rights upon franchise termination or revocation. If the City revokes the
36 franchise or the franchise otherwise terminates, the City shall have the following rights,
37 in addition to the rights specified in this franchise or under applicable law:

38
39 (1) The City may require the former Franchisee to remove its facilities and
40 equipment at the former Franchisee's expense. If the former Franchisee fails to do so
41 within a reasonable period of time, the City may have the removal done at the former
42 Franchisee's and/or surety's expense, subject to any right of abandonment that may be
43 provided for under applicable law.

44
45 (2) The City, by Governing Body resolution, may acquire ownership or
46 effect a transfer of the Cable System at fair market value if the franchise is revoked for
47 cause in accordance with the Cable Ordinance, at an equitable price. The terms
48 "equitable price" and "fair market value" shall be interpreted in accordance with 47.
49 U.S.C. § 547.

1 (3) Section 13(E)(2) does not apply to an abandonment. If a Cable
2 System or any part thereof is abandoned by the Franchisee, the City may require the
3 Franchisee to transfer title to the abandoned portions to it at no charge, free and clear
4 of encumbrances, and the same will become the City's property and the City may keep,
5 sell, assign, or transfer all or part of the assets of the Cable System, or otherwise
6 dispose of those assets as it sees fit. In the event the City acquires title, the Franchisee
7 shall have no further liability for the Cable System.

8
9 **Section 15. ENFORCEMENT AND REMEDIES: REVOCATION.**

10 (A) Right to revoke; generally.

11 (1) The Governing Body may revoke this Franchise if it finds that the
12 Franchisee has committed a material breach of this Franchise or repeatedly failed to
13 comply with this Franchise; has defrauded or attempted to defraud the City or
14 Subscribers; or has attempted to evade the requirements of this Franchise.

15
16 (2) Before revoking a Franchise, the following must have occurred:

17
18 (a) The City Manager must give the Franchisee notice of an alleged
19 default in performance (which notice will describe the nature of an alleged violation or
20 breach) and a 30 calendar day opportunity to cure or such additional time as is
21 reasonably necessary (the "cure period"); except that an opportunity to cure is not
22 required where the defect in performance is due to willful misconduct or fraud or
23 attempted fraud, is an adjudicated felony violation of criminal law, or is part of a pattern
24 of substantial violations where the Franchisee has already had notice and opportunity to
25 cure. The City may extend the cure period for up to 30 additional days if the
26 Franchisee has diligently attempted to correct the alleged default.

27
28 (b) Not sooner than 30 calendar days after the City Manager
29 notifies the Franchisee of the default (or such longer period as may be required to
30 encompass an extended cure period), the City Council shall hold a public hearing to
31 consider whether the Franchise should be revoked, at which time the Franchisee and
32 the public will be given an opportunity to be heard and the Franchisee to present
33 evidence for consideration by the City Council.

34
35 (3) Following the close of the public hearing the City Council may
36 determine whether to revoke the Franchise. If the Franchisee was entitled to an
37 opportunity to cure a default, the Franchise may not be revoked if the default was fully
38 cured during the cure period, including by payment of all damages and penalties owed.
39 If the City Council determines to revoke the Franchise, it will issue a written decision
40 setting forth the reasons for its decision.

41
42 (4) A copy of such decision will be transmitted to the Franchisee.

43
44 (B) Rights upon Franchise termination or revocation. If the City revokes the
45 Franchise or the Franchise otherwise terminates, the City may require the former
46 Franchisee to remove its facilities and equipment at the former Franchisee's expense.
47 If the former Franchisee fails to do so within a reasonable period of time, the City may
48 have the removal done at the former Franchisee's and/or surety's expense, subject to
49 any right of abandonment that may be provided for under applicable law. The
50 Franchisee may appeal such actions to a court of competent jurisdiction.

1
2 (C) Termination in the event of bankruptcy. This Franchise will terminate
3 automatically by force of law 180 calendar days after an assignment for the benefit of
4 creditors or the appointment of a receiver or trustee to take over the business of the
5 Franchisee, whether in a receivership, reorganization, bankruptcy assignment for the
6 benefit of creditors, or other action or proceeding. However, the Franchise may be
7 reinstated within that 180 day period, if:

8 (1) Such assignment, receivership or trusteeship has been vacated; or

9 (2) Such assignee, receiver or trustee has fully complied with the terms
10 and conditions of this Franchise, and has executed an agreement, approved by any
11 court having jurisdiction, assuming and agreeing to be bound by the terms and
12 conditions of this Franchise. In the event of foreclosure or other judicial sale of any of
13 the facilities, equipment or property of the Franchisee, the City may revoke the
14 Franchise following a public hearing before the City Council, by serving notice upon the
15 Franchisee and the successful bidder at the sale, in which event the Franchise and all
16 rights and privileges thereunder will be revoked and will terminate 30 calendar days
17 after serving such notice, unless:

18 (a) The City has approved the transfer of the Franchise to the
19 successful bidder; and

20 (b) The successful bidder has covenanted and agreed with the City
21 to assume and be bound by the terms and conditions of the Franchise.

22
23 (D) Effect of termination or forfeiture. Upon termination or forfeiture of this
24 Franchise, whether by action of the City as provided above, or by passage of time, the
25 City may do one or a combination of the following:

26
27 (1) The Franchisee must, should the City so direct, stop using the Cable
28 System for the purposes authorized by the Franchise.

29 (2) The City may require the former Franchisee to remove all or a portion
30 of its facilities and equipment at the former Franchisee's expense, subject to any right
31 the Franchisee may have to abandon property in place. If the former Franchisee fails to
32 remove its property within a reasonable period of time, the City may have the removal
33 done at the former Franchisee's and/or surety's expense. Such removal by the
34 Franchisee must be done in accordance with all applicable laws and construction
35 standards. Conditions of the site of removal must be left in substantially as good of
36 condition as before the equipment was removed.

37
38 **Section 16. MISCELLANEOUS PROVISIONS.**

39 (A) Compliance with laws. The Franchisee shall comply with all applicable
40 federal, state and local laws and regulations as they become effective, unless otherwise
41 stated herein.

42
43 (B) Governing law. This franchise shall be governed and construed in
44 accordance with the statutes and laws of the state of New Mexico.

45
46 (C) No pledging of the City's credit. Under no circumstances shall the Franchisee
47 have the authority or power to pledge the credit of the City or incur any obligation in the
48 name of the City. The Franchisee shall save and hold harmless the City, its Governing
49 Body, its officers, employees, boards and commissions for expenses arising out of any
50 unauthorized pledges of the City's credit by the Franchisee under this franchise.

1
2 (D) Venue. In the event that suit shall be brought by either party, the parties
3 agree that venue shall be exclusively vested in the Fifth Judicial District Court, State of
4 New Mexico or, where otherwise appropriate, exclusively in the United States District
5 Court for the district of New Mexico.
6

7 (E) Force majeure. The Franchisee shall not be deemed in default with
8 provisions of its franchise where performance was rendered impossible by war or riots,
9 civil disturbances, floods or other natural catastrophes beyond the Franchisee's control
10 or the unforeseeable unavailability of labor or materials. The acts or omissions of
11 affiliates are not beyond the Franchisee's control, and the knowledge of affiliates shall
12 be imputed to Franchisee. The Franchise shall not be revoked or the Franchisee
13 penalized for such noncompliance, provided that the Franchisee takes immediate and
14 diligent steps to bring itself back into compliance and to comply as soon as possible
15 under the circumstances with its Franchise without unduly endangering the health,
16 safety and integrity of the Franchisee's employees or property, or the health, safety and
17 integrity of the Public, public Rights-of-Way, public property, or private property.
18

19 (F) Notices. Unless otherwise expressly stated herein, notices required under
20 this franchise shall be mailed first class, postage prepaid, or sent overnight delivery to
21 the addressees below. Each party may change its designee by providing written notice
22 to the other party, but each party may only designate one entity to receive notice.
23

24 (1) Notices to the Franchisee shall be mailed to:

25
26 Cable One, Inc.
27 General Manager
28 1117 Rio Rancho Blvd.
29 Rio Rancho, New Mexico 87124;
30

31 with a copy to:

32
33 Vice President and General Counsel
34 Cable One, Inc.
35 1314 N. Third Street
36 Phoenix, AZ 85004
37

38 (2) Notices to the City shall be mailed to:

39
40 City Manager
41 City of Rio Rancho 3900 Southern Blvd
42 Rio Rancho, New Mexico 87124
43

44 with a copy to:

45
46 City Attorney
47 City of Rio Rancho
48 3900 Southern Blvd.
49 Rio Rancho, New Mexico 87124
50

1 (G) Calculation of time. Unless otherwise indicated, when the performance or
2 doing of any act, duty, matter or payment is required hereunder and a period of time or
3 duration for the completion thereof is prescribed and is fixed herein, the time shall be
4 computed so as to exclude the first and include the last day of the prescribed or fixed
5 period of duration/time.

6
7 (H) Time of essence; maintenance of records of essence. In determining
8 whether the Franchisee has substantially complied with its franchise, the parties agree
9 that time is of the essence to this franchise. The maintenance of records and provision
10 of reports in accordance with the franchise is also of the essence to this franchise.

11
12 (I) Publication Costs. The Franchisee shall pay the cost of publication of the
13 franchise ordinance upon the Franchisee's acceptance of the Franchisee.

14
15 (J) Captions. The captions and headings of this franchise are for convenience
16 and reference purposes only and shall not affect in any way the meaning and
17 interpretation of any provisions of this franchise.

18
19 **Section 17. ANTI-TAMPERING.**

20 It shall be unlawful for any person, firm, corporation or other entity:

21 (A) To make any unauthorized connection, whether physically, electrically,
22 acoustically, inductively or otherwise, with any part of the Cable System within the City
23 for the purpose of taking or receiving television signals, radio signals, lights signals or
24 other electronic signals;

25
26 (B) To make any unauthorized connection, whether physically, electrically,
27 acoustically, inductively or otherwise, with any part of a Cable System within the City for
28 the purpose of enabling himself or herself or others to receive any television signal,
29 radio signal, light signal or other electronic signal, without payment to the Franchisee
30 operating such System; or

31
32 (C) To willfully tamper with, remove or injure any cable, wires or equipment of the
33 Cable System used by a the Franchisee within the Franchise Area for distribution of
34 such signals without the consent of the Franchisee operating such System.

35
36 (D) Any person convicted of a violation of this section shall be guilty of a
37 misdemeanor and shall be punished by a fine of not more than \$300 or by
38 imprisonment of not more than 90 days or by both fine and imprisonment or the
39 maximum permitted under applicable law. Every violation of this section shall be a
40 misdemeanor. Every day such violation is committed or permitted to continue shall be
41 considered a separate offense and shall be punishable as such hereunder.

42
43 **Section 18. SEVERABILITY CLAUSE.**

44 If any section, paragraph, sentence, clause, word or phrase of this Ordinance is for any
45 reason held to be illegal, unconstitutional, invalid or unenforceable by a court, agency or
46 legislature of competent jurisdiction, said provision shall be considered a separate,
47 distinct, and independent part of this Franchise, and such decision shall not affect the
48 validity of the remaining provisions of this ordinance. The City Council hereby declares
49 that it would have passed this Ordinance and each section, paragraph, sentence,
50 clause, word or phrase thereof irrespective of any provision being declared

1 unconstitutional or otherwise invalid. In the event that a court or agency or legislature
2 of competent and controlling jurisdiction acts so that any material provision of this
3 agreement is unenforceable according to its terms, or is otherwise void, the parties
4 agree to immediately enter into negotiations in good faith to restore the relative burdens
5 and benefits of this franchise. If the parties are unable to agree to a modification of this
6 franchise within sixty (60) days, either party may with ninety (90) days prior notice,
7 terminate or shorten the franchise term; or resort to litigation to seek any available
8 equitable relief; or do both. Each party agrees to participate in up to sixteen (16) hours
9 of negotiation during the sixty (60) day period. Notwithstanding the foregoing, if a party
10 believes a provision is not material, it must so notify the other party within fourteen (14)
11 days of a request by such other party that it enter into negotiations, or else the
12 materiality claim is waived. The obligation to negotiate is not tolled, and the parties must
13 discharge their negotiation responsibility notwithstanding the dispute as to materiality.
14 The remedies provided for herein do not prevent a party from contending that a
15 particular provision is enforceable, or foreclose any remedies if a provision is
16 enforceable.

17
18 **Section 19. MERGER; AMENDMENT.**

19 This Franchise represents the entire agreement between the parties with respect to the
20 matters addressed herein, and all prior franchises, agreements, covenants, and
21 understandings between the parties concerning the same have been merged into this
22 written Franchise. This Franchise shall not be altered, modified, changed, or amended
23 except by a written instrument executed by the parties.
24

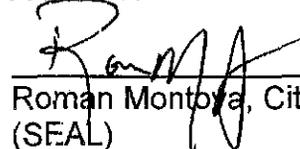
25
26 **Section 19. EFFECTIVE DATE.** This Ordinance shall become effective ten days after
27 adoption.

28
29 ADOPTED THIS 23RD DAY OF JANUARY, 2008.

30
31
32 
33 Michael J. Williams, Mayor

34
35 1/28/08
36 _____
37 Date

38 ATTEST:

39 
40 _____
41 Roman Montoya, City Clerk
42 (SEAL)