# CLARKSVILLE CITY COUNCIL
# SPECIAL SESSION
# NOVEMBER 19, 2014, 4:30 P.M.

**COUNCIL CHAMBERS**
**106 PUBLIC SQUARE**
**CLARKSVILLE, TENNESSEE**

# AGENDA

1) CALL TO ORDER

2) PRAYER AND PLEDGE OF ALLEGIANCE

3) ATTENDANCE

4) CDE LIGHTBAND CABLE FRANCHISE

   1. **ORDINANCE 30-2014-15** (Second Reading) Renewing the CDE Lightband cable franchise *(Mayor McMillan)*

5) ADJOURNMENT

ORDINANCE 30-2014-15

AN ORDINANCE RENEWING A FRANCHISE AGREEMENT BETWEEN THE CITY OF CLARKSVILLE AND THE CLARKSVILLE DEPARTMENT OF ELECTRICITY *LIGHTBAND* AND THE CLARKSVILLE ELECTRIC POWER BOARD AND SPECIFYING THE TERMS AND CONDITIONS OF THAT CABLE TELEVISION SERVICE FRANCHISE

*WHEREAS,* the City of Clarksville has been authorized by the State of Tennessee to grant franchises for the operation of cable television service within the City of Clarksville, Tennessee; and

*WHEREAS,* the City of Clarksville has previously granted a non-exclusive franchise to the Clarksville Department of Electricity Lightband for cable television service within the City, pursuant to Ordinance 87-2010-11, and

*WHEREAS,* said non-exclusive franchise is due to expire December 31, 2014, and

*WHEREAS,* the City has received a request from the Clarksville Department of Electricity Lightband and the Clarksville Electric Power Board to renew the current cable television service franchise agreement, and

*WHEREAS,* the City has considered the terms and conditions of the City's current cable franchise agreement with CDE Lightband and with other cable television service provider franchisees, and

*WHEREAS,* City has determined that renewal of the CDE Lightband franchise on the terms set forth in the attached Franchise Agreement attached herein as Exhibit A is in the public interest and will assist in meeting the cable television service related needs and interests of City residents and the entire community.

*NOW, THEREFORE,* the Clarksville City Council hereby approves the renewal of the cable television service franchise for the Clarksville Department of Electricity Lightband in accordance with the terms and provisions of the attached Franchise Renewal Agreement attached hereto and incorporated herein as Exhibit A.

*FIRST READING:* November 17, 2014
*SECOND READING:*
*THIRD READING:*
*EFFECTIVE DATE:*

# RENEWAL OF FRANCHISE AGREEMENT

This Renewal of Franchise Agreement is between the City of Clarksville, Tennessee hereinafter referred to as the "Franchising Authority" and the Clarksville Department of Electricity Lightband/ Electric Power Board, hereinafter referred to as the "Grantee."

The Franchising Authority hereby acknowledges that the financial, legal and technical ability of the Grantee is sufficient to provide services, facilities and equipment necessary to meet the future cable-related television service needs of the community, and having afforded the public adequate notice and opportunity for comment, desires to enter into this Franchise Agreement with the Grantee for the operation, improvement, and maintenance of a cable television service system on the terms set forth herein.

## SECTION 1
## Definition of Terms

**1.1 Terms.** For the purpose of this franchise the following terms, phrases, words and their derivations shall have the meaning ascribed to them in the Cable Communications Policy Act of 1984, as amended from time to time (the "Cable Act"), unless otherwise defined herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

"Basic Cable" shall mean the lowest priced tier of Cable Service that includes the delivery of broadcast signals and any educational and governmental access channels.

"Council" shall mean the City Council of Clarksville, Tennessee.

"Cable Act" shall mean the Cable Communication Policy Act of 1984, as amended, 47 U.S.C. §§ 521, et. seq.

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

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

"FCC" shall mean the Federal Communications Commission and any successor governmental entity thereto.

"Franchise Authority" shall mean the City of Clarksville, Tennessee.

"Franchise" shall mean the non-exclusive rights granted pursuant to this franchise to construct, improve, operate, and maintain a television service Cable System along the public ways within all or a specified area in the Service Area.

"Grantee" shall mean the Clarksville Department of Electricity or its lawful successor, transferee or assignee.

“Gross Revenue” shall mean all cash compensation or revenues of any kind or nature received directly or indirectly by the Grantee, its subsidiaries or parent which are cable operators, arising from, attributable to, or in any way derived from the provision of cable services by the Grantee within the City, as long as all such gross revenues are in accordance with Generally Accepted Accounting Principals, provided, however, that such phrase shall not include: (1) any local, state or federal tax or the FCC User Fee; (2) unrecovered bad debt; (3) and any EG amounts recovered from Subscribers. Gross Revenues includes, but is not limited to, monthly fees charged to subscribers for basic service; monthly fees charged to subscribers for any optional, premium or per-channel or per-program service; monthly fees charged to subscribers for any tier of service other than basic service; installation, disconnection, re-connection, franchise fees collected from subscribers; change-in-service fees; leased channel fees; late fees; converter fees, rentals or sales; advertising revenues; and revenues derived by the Grantee from home shopping channel sales to susbcribers. Advertising and home shopping revenues shall be allocated on a pro-rata basis based on the proportion of total subscribers on Grantee’s cable system represented by subscribers residing within the franchise area, provided they cannot be calculated on a per-franchise basis. Gross Revenues as here defined shall be the basis for computing the franchise fee.

"Installation" shall mean the connection of the Cable System from feeder cable to Subscribers' terminals.

"Person" shall mean an individual, partnership, association, organization, corporation or any lawful successor, transferee or assignee of said individual, partnership, association, organization or corporation.

"Public School" shall mean any State accredited school at any educational level operated within the Service Area by any public, private or parochial school system, but limited to, elementary, junior high school, and high school.

"Reasonable notice" shall be written notice addressed to the Grantee at its principal office or such other office as the Grantee has designated to the Franchise Authority as the address to which notice should be transmitted to it.

"Service Area" shall mean the geographic boundaries of the Franchise Authority, and shall include any additions thereto by annexation or other legal means, subject to the exception in subsection 6.1 hereto.

"State" shall mean Tennessee.

"Street" shall include each of the following which have been dedicated to the public or hereafter dedicated to the public and maintained under public authority or by others and located within the Service Area: streets, roadways, highways, bridges, land paths, boulevards, avenues, lanes, alleys, sidewalks, circles, drives, easements, rights-of-way and similar public ways and extensions and additions thereto, including but not limited to public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses now or hereafter held by the Franchising Authority in the Service Area, which shall entitle the Grantee to the use thereof for the purpose of installing, operating, repairing and maintaining the Cable System..

"Subscriber" shall mean any person lawfully receiving Cable Service from the Grantee.

## SECTION 2
## Grant of Franchise

**2.1 Grant.** The Franchising Authority hereby grants to the Grantee a nonexclusive Franchise which authorizes the Grantee to erect, construct, operate and maintain in, upon, along, across, above, over and under the Streets, now in existence and as may be created or established during its terms; any poles, wires, cable, underground conduits, manholes, and other conductors and fixtures necessary for the maintenance and operation of a Cable System. Nothing in this Franchise shall be construed to prohibit the Grantee from offering any service over its Cable System that is not prohibited by federal, State or local law.

**2.2 Term.** The Franchise and the rights, privileges and authority hereby granted shall be for an initial term of five years ( 5) years commencing on the Effective Date of this Franchise of January 1, 2015, and ending on December 31, 2020, as set forth in subsection 15.8, unless otherwise lawfully terminated in accordance with the terms of this Franchise.

**2.3 Additional Franchises.**

2.3.1 Additional Cable Franchise, Construction or Operation in More Favorable Terms. If, following the Effective Date, another multichannel video provider (MCVP) constructs and/or operates a cable system in Franchising Authority's jurisdiction, whether or not franchised by a process similar to Grantee's, and the Grantee believes that said MCVP's franchise or unfranchised operating situation bestows benefits and imposes burdens on such third party which on balance, are materially more advantageous to such third party than the benefits bestowed and imposed on the Grantee by this Agreement are to the Grantee, then, at any time, the Grantee may request that the Franchising Authority make a determination to such effect and, in the event of such a determination, request renegotiation of terms and conditions of this Agreement as provided below. The Franchising Authority shall provide advance written public notice of any third party application to obtain an Additional Cable Franchise Agreement.

2.3.2 Procedure. In the event of such a request, the Franchising Authority will consult with the Grantee to determine, under its standard procedures, whether the Additional Cable Franchise Agreement or unfranchised operating situation bestows benefits and imposes burdens on the third party, which on balance, are materially more advantageous to the third party than the benefits and burdens imposed by this Agreement are to the Grantee.

2.3.3 In making a determination under this subsection, the Franchising Authority will consult with the Grantee to consider factors such as, but not limited to: (i) the term of the franchise; (ii) the franchise fee to be paid by each Grantee, including the Grantee herein; (iii) the number and density of dwelling units to be served; (iv) differences in construction, operational and maintenance costs; (v) differences in required system characteristics, including state-of-the-art requirements; (vi) differences in service obligations, including EG Access and institutional

service requirements; (vii) differences in permitted Grantee fees and charges; and (viii) such other factors and considerations as it considers to be relevant to an inquiry into the overall economic, technical and operational comparability of the agreements or situations. If the Franchising Authority determines that the Additional Cable Franchise Agreement or unfranchised operating situation bestows benefits and imposes burdens on the third party which, on balance, are materially more advantageous to the third party than the benefits bestowed and burdens imposed by this agreement are to the Grantee, then upon the Grantee's request, the Franchising Authority and the Grantee shall enter into good faith negotiations to seek to modify

this Agreement to bestow benefits and impose burdens which, on balance, create overall economic, technical and operational comparability between this Agreement and the Additional Cable Franchise Agreement or unfranchised operating situation.

**2.4 Police Powers and Conflicts with Franchise.** In accepting this Franchise, the Grantee acknowledges that its rights hereunder are subject to the police power of the Franchising Authority to adopt and enforce the laws and regulations of general applicability necessary to the safety and welfare of the public; and it agrees to comply with all applicable general laws and franchises enacted by the Franchising Authority pursuant to such power. Subject to its lawful police powers, the Franchising Authority may not, by franchise or otherwise, alter any of the Grantee's material rights, benefits, obligations or duties as specified in this Franchise. In the event of a conflict between any ordinance and this Franchise, this Franchise shall control, provided, however, that the Grantee agrees that it is subject to the lawful police power of the Franchising Authority.

**2.5 Cable System Franchise Required.** No Cable System shall be allowed to occupy or use the streets or public rights- of -way of the Service Area or be allowed to operate without a Cable System Franchise to the extent that the Franchising Authority is allowed by law to require one**.**

## SECTION 3
## Franchise Renewal

**3.1 Procedures for Renewal.** The Franchising Authority and the Grantee agree that any proceedings undertaken by the Franchising Authority that relates to the renewal of the Grantee's Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, or any such successor statute.

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

## SECTION 4
## Indemnification and Insurance

**4.1 Indemnification.** The Grantee shall, by acceptance of the Franchise granted herein, defend the Franchising Authority, its officers, boards, commissions, agents, and employees for all claims for injury to any person or property caused by the negligence of Grantee in the construction, installation, or maintenance operation of the Cable System and in the event of a determination of liability shall indemnify and hold Franchising Authority, its officers, boards, commissions, agents, and employees harmless from any and all liabilities, claims, demands, or judgments growing out of any injury to any person or property as a result of the violation or failure of Grantee to observe its proper duty or because of the negligence of Grantee arising out of the construction, repair, extension, maintenance, operation or removal of its wires, poles or other equipment of any kind or character used in connection with the operation of the Cable

System, provided that the Franchising Authority shall give the Grantee written notice of its obligation to indemnify the Franchising Authority within ten (10) days of receipt of a claim or action pursuant to this section. Notwithstanding the foregoing, the Grantee shall not be obligated to indemnify the Franchising Authority for any damages, liability or claims resulting from the willful misconduct or negligence of the Franchising Authority or for the Franchising Authority's use of the Cable System, including any EG channels

**4.2 Insurance and Bond.**

The Grantee shall maintain throughout the term of the Franchise insurance in amounts at least as follows:

| | |
|---|---|
| Workers' Compensation | Statutory Limits – to the extent required by law |
| Commercial General Liability | $1,000,000 per occurrence, Combined Single Liability (C.S.L.) $2,000,000 General Aggregate or the maximum amount of liability of the Franchisee pursuant to state law, whichever is less |
| Auto Liability including coverage on all owned, non-owned hired autos | $1,000,000 per occurrence C.S.L. or the maximum amount of liability of the Franchisee pursuant to state lawm whichever is less |
| Umbrella Liability | $1,000,000 per occurrence C.S.L. or the maximum amount of liability of the Franchisee pursuant to state law, whichever is less |

The Franchising Authority shall be added as an additional insured to the above Commercial General Liability, Auto Liability and Umbrella Liability insurance coverage. The Grantee shall furnish the Franchising Authority with current certificates of insurance evidencing such coverage.

**4.3 Bond.** General Requirement for Bond. In the event of an upgrade to the system, Grantee shall furnish to the Franchising Authority a performance bond, which shall comply with the terms and provisions of any ordinance of general applicability and both of the Cable Ordinance and this Agreement, which shall be in the minimum amount of $50,000, while the upgrade is in progress. Upon completion of the upgrade in the franchised area, Grantee shall furnish to the Franchising Authority a performance bond, which shall comply with the terms and provisions of this Agreement, which shall be in the minimum amount of $25,000. Not withstanding the foregoing, Grantee shall maintain a bond in the amount of $25,000 throughout the term of this agreement.

**4.4 Indemnification.** The Performance Bond shall indemnify the Franchising Authority, up to the full face amount of the Performance Bond, for (i) any unreimbursed loss or damage to the Streets or any property of the City caused by the Grantee during the construction, installation, operation, upgrade, repair, maintenance or removal of

Equipment; or (ii) any other unreimbursed cost, loss or damage actually incurred by the City as a result of the Grantee's failure to perform its material obligations pursuant to this Agreement.

**4.5 Other Purposes.** The Performance Bond also shall serve as security for:

(a) The faithful performance by the Grantee of material terms, conditions and obligations of this Agreement, including, but not limited to, the insurance requirements set forth in Section 4 or compensation requirements set forth in Section 10;

(b) Any unreimbursed expenditure, damage or loss incurred by the Franchising Authority occasioned by the Grantee's material failure to comply with all rules, regulations, orders, permits and other lawful directives of the Franchising Authority issued pursuant to this Agreement;

**4.6. Not a Limit on Liability.** The obligation to perform under, and the liability of the Grantee pursuant to, this Agreement shall not be limited by the acceptance of the Performance Bond required by this Section.

## SECTION 5
## Service Obligations

**5.1 No Discrimination.** Grantee shall not deny service, deny access, or otherwise discriminate against Subscribers, channel users, or general citizens on the basis of race, color, religion, national origin, age or sex. Grantee shall comply at all times with all other applicable federal, State and local laws and regulations.

**5.2 Privacy.** The Grantee shall fully comply with any provisions regarding the privacy rights of Subscribers contained in applicable federal or State law subject to the requirements of Tenn. Code Ann. § 10-7-503 and § 10-7-504.

**5.3 Rates.** Grantee shall establish rates that are nondiscriminatory within the same general class of Subscribers. Nothing contained herein shall prohibit the Grantee from offering (i) discounts to commercial and multiple family dwelling Subscribers billed on a bulk basis; (ii) promotional discounts; (iii) reduced installation rates for Subscribers who have multiple services ;or (iv) discounted rates in those portions of the Service Area subject to competition.

## SECTION 6
## Service Availability

**6.1 Service Area.** The Grantee shall make Cable Service distributed over the Cable System available to every dwelling unit within the Service Area reaching the minimum density of at least twenty-five (25) dwelling units per mile at its published rates for Installation. The Grantee may elect to provide Cable Service to areas not meeting the above standards.

**6.2 Service to New or Previously Unserved Single Family Dwellings.** The Grantee shall offer Cable Service to all new homes or previously unserved single dwellings located within one hundred fifty (150) feet of Grantee’s feeder cable at its published rates for standard Installation subject to provisions of 6.1.

**6.3 Service to New Subdivisions.** Grantee shall make cable service available to dwelling units within the City where the dwelling unit is in an area which Grantee has completed construction of its facilities, where the minimum density is twenty-five (25) dwelling units per cable mile or greater, and provided such dwelling units are located within one hundred fifty (150) feet of Grantee's distribution system. A dwelling unit in a new subdivision shall be considered a dwelling unit if a dwelling unit foundation has been erected and electric facilities have been installed to provide electric service to said dwelling unit. Grantee shall extend such service within six (6) months of a request by a resident of the development

**6.4 Service to Annexed Areas.** Grantee shall offer Cable Service to any area described in any annexation franchise passed after the Effective Date of this Franchise, within one (1) year after the effective date of such annexation franchise, except that Cable Service shall not be required if similar existing Cable Service is in place or if the density of homes is less than that required in Section 6.1 or dwelling units are more than one hundred fifty (150) feet from Grantee's distribution system. If Franchising Authority annexes any area during the term of this agreement, Franchising Authority shall provide written notice to the Grantee at the addresses as provided in Section 15.4 within thirty (30) days of said action.

**6.5 Additional Service.** Grantee may elect to offer Cable Service to areas not meeting the above standards. The Grantee may impose an additional charge in excess of its regular installation charge for any Cable Service Installation requiring a service drop in excess of the above standards. This additional charge shall be computed on a time plus materials basis to be calculated on that portion of the Installation that is above and beyond one hundred fifty (150) feet.

**6.6 New Development Underground.** In cases of new construction or property development where utilities are to be placed underground, the Franchising Authority agrees to require as a condition of issuing a permit for open trenching to any developer or property owner that such developer or property owner give Grantee at least thirty (30) days prior notice of such construction or development, and of the particular date on which open trenching will be available for Grantee's installation of conduit, pedestals and/or vaults, and laterals to be provided at Grantee's expense. Grantee shall also provide specifications as needed for trenching. Costs of trenching and easements required to bring service to the development shall be borne by the developer or property owner; except that if Grantee fails to install its conduit, pedestals and/or vaults, and laterals within five (5) working days of the date the trenches are available, as designated in the notice given by the developer or property owner, then should the trenches be closed after the five-day period, the cost of new trenching is to be borne by Grantee.

## SECTION 7.
## Construction and Technical Standards

**7.1 Compliance with Codes.** All construction practices and installation of equipment shall be done in accordance with all applicable sections of the Occupational Safety and Health Act of 1970 and the National Electric Safety Code.

**7.2 Construction Standards and Requirements.** All transmission lines, equipment and structures shall be so installed and located as to cause minimum interference with the rights and reasonable convenience of property owners and at all times shall be kept and maintained in a safe, adequate and substantial condition, and in good order and repair. The Grantee shall, at all times, employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public. Suitable barricades, flags, lights, flares or other devices shall be used at

such times and places as are reasonably required for the safety of all members of the public. Any poles or other fixtures placed in any public way by the Grantee shall be placed in such a manner as not to interfere with the usual travel on such public way. All of the Grantee's plant and equipment, including but not limited to the antenna site, head-end and distribution system, towers, house connections, structures, poles, wire, cable, coaxial cable, fixtures and appurtenances shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with good engineering practices and performed by experienced maintenance and construction personnel.

**7.3 Safety.** The Grantee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage,

**7.4 Network Technical Requirements.** The Cable System shall be operated so that it is capable of continuous twenty-four (24) hour daily operation, capable of meeting or exceeding all applicable federal technical standards, as they may be amended from time to time, and operated in such a manner as to comply with all applicable FCC rules and regulations.

**7.5 Performance Monitoring.** Grantee shall test the Cable System as required in paragraph 76.609, Subpart K of the FCC Rules and Regulations. To the extent that the report of measurements as required above may be combined with any reports of measurements required by the FCC or other regulatory agencies, the Franchising Authority shall accept such combined reports. The Franchising Authority may require additional tests, full or partial repeat tests - all solely to establish compliance with FCC technical standards - when there is evidence which casts doubt upon the reliability or technical quality of Cable Service on the basis of complaints received or other evidence indicating an unresolved controversy or significant non-compliance, and such tests will be limited to the particular matter in controversy. The Franchising Authority will endeavor to so arrange its requests for such additional tests so as to minimize hardship or inconvenience to Grantee or to the Subscriber. Any third party that implements “additional tests” shall be mutually agreed upon by both parties. Only Grantee personnel shall be allowed to manipulate the plant. If no reason for cure is found by the additional tests, Franchising Authority shall pay all costs associated with the test.

## SECTION 8
## Conditions on Street Occupancy

**8.1 General Conditions.** Grantee shall have the right to utilize existing poles, conduits and other facilities whenever possible, and shall not construct or install any new, different, or additional poles, conduits, or other facilities whether on public property or on privately owned property until the written approval of the Franchising Authority is obtained, which approval shall not be unreasonably withheld. However, no location of any pole or wire holding structure of the Grantee shall be a vested interest and such poles or structures shall be removed or modified by the Grantee whenever the Franchising Authority reasonably determines that the public convenience would be enhanced thereby. The costs for such removal or modification shall be paid by Grantee if all other users of the streets are also required to pay such costs for their facilities.

**8.2 Underground Construction.** The facilities of the Grantee shall be installed underground in those Service Areas where existing electric service is underground at the time of system construction. In areas where electric utility facilities are installed aerially at the time of system construction, the Grantee may install its facilities aerially with the understanding that at such

time as the existing aerial facilities are required to be placed underground by the Franchising Authority, the Grantee shall likewise place its facilities underground.

**8.3 Permits.** The Franchising Authority shall cooperate with the Grantee in granting any permits required, which shall not be unduly delayed or withheld, providing such grant and subsequent construction by the Grantee shall not unduly interfere with the use of such Streets and that proposed construction shall be done in accordance with the pertinent provisions of the Franchise and franchises of the Franchising Authority.

**8.4 Restoration of Public Ways.** Grantee shall, at its own expense, restore any damage or disturbance caused to the public way as a result of its operation, construction, or maintenance of the Cable System to a condition reasonably comparable to the condition of the Streets immediately prior to such damage or disturbance.

**8.5 Removal in Emergency.** Whenever, in case of fire or other disaster, it becomes necessary in the judgment of the Franchising Authority to remove any of the Grantee's facilities, no charge shall be made by the Grantee against the Franchising Authority for restoration and repair, unless such acts amount to gross negligence by the Franchising Authority.

**8.6 Tree Trimming.** Grantee or its designee shall have the authority to trim trees on public property at its own expense as may be necessary to protect its wires and facilities.

**8.7 Relocation for the Franchising Authority.** The Grantee shall, upon receipt of reasonable advance written notice, to be not less than five (5) business days, protect, support, temporarily disconnect, relocate, or remove any property of Grantee when lawfully required by the Franchising Authority by reason of traffic conditions, public safety, street vacation, freeway or street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power line, signal line, transportation facilities, tracks, or any other types of public structure or improvements which are not used to compete with the Grantee's services. Grantee shall be responsible for any costs associated with these obligations to the same extent all other users of the Franchising Authority rights-of-way are responsible for the costs related to their facilities.

**8.8 Relocation for a Third Party.** The Grantee shall, on the request of any person holding a lawful permit issued by the Franchising Authority, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Street as necessary any property of the Grantee, provided that the expense of such is paid by any such person benefiting from the relocation and the Grantee is given reasonable advance written notice to prepare for such changes. The Grantee may require such payment in advance. For purposes of this subsection, "reasonable advance written notice" shall be no less than ten (10) calendar days in the event of a temporary relocation and no less than one hundred twenty calendar days (120) for a permanent relocation.

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

**8.10 Emergency Use.** Grantee shall provide an Emergency Alert System ("EAS"), in accordance with FCC standards. Franchising Authority shall permit only appropriately trained and authorized Persons to operate the EAS equipment and shall take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in inappropriate use

thereof, or any loss or damage to the Cable System. The Franchising Authority shall indemnify Grantee for any damages, liability or claims against Grantee resulting from the Franchising Authority's use of the EAS or its replacement.

**8.11 Use of Grantee Facilities.** The Franchising Authority shall have the right, during the life of this Franchise, to install and maintain free of charge upon the poles owned by the Grantee and conduit owned by the Grantee any wire and pole fixtures that do not unreasonably interfere with the current or future system operations of the Grantee. This right shall not apply to any facilities used by the Franchising Authority or other public or quasi-public body or entity funded in whole or part, directly or indirectly, by any government funds or entity to compete with Grantee. The Franchising Authority shall remove at its own expense any of the foregoing wire or pole fixtures within 60 (sixty) days of written request by Grantee to do so if such wire or pole fixtures, at some time after their placement, begin to interfere unreasonably with Grantee's operations.

## SECTION 9
## SERVICE REQUIREMENTS

**9.1 Phone.** The Grantee shall have a toll-free listed telephone and be so operated that complaints and requests for repairs or adjustments may be received at any time.

**9.2 Notification of Service Procedures.** The Grantee shall furnish each Subscriber at the time service is installed, written instructions that clearly set forth information concerning the procedures for making inquiries or complaints, including the Grantee's name, address and local telephone number. Grantee shall give the Franchising Authority thirty (30) days prior notice of any rate increases, channel lineup or other substantive service changes.

**9.3 Rate Regulation.** To the extent that Federal regulation may now, or as the same may hereafter be amended to, authorize the Franchising Authority to regulate the rates for any particular service tiers, service packages, equipment, or any other services provided by Grantee, the Franchising Authority shall have the right to exercise rate regulation to the full extent authorized by law, or to refrain from exercising such regulation for any period of time, at the sole discretion of the Franchising Authority. If and when exercising rate regulation, the Franchising Authority shall abide by the terms and conditions set forth by the FCC.

**9.4 Customer Service Standards**. Grantee shall be bound by the FCC's Customer Service Standards, as they may be amended from time to time. For reference only, the FCC Customer Service Standards, as they existed on the Effective Date of this Franchise Agreement, are reprinted in Exhibit A.

**9.5 Continuity of Service.** It shall be the right of all Subscribers to continue receiving Cable Service insofar as their financial and other obligations to the Grantee are honored. In the event that the Grantee elects to overbuild, rebuild, modify, or sell the Cable System, or the Franchising Authority gives notice of intent to terminate or fails to renew this Franchise, the Grantee shall act so as to ensure that all Subscribers receive continuous, uninterrupted service unless circumstances are beyond the control of the Grantee, unforeseen circumstances, or acts of God. In the event of a change of Grantee, or in the event a new operator acquires the Cable System, the Grantee shall cooperate with the Franchising Authority, new Grantee or operator in maintaining continuity of service to all Subscribers. During such period, Grantee shall be entitled to the revenues for any period during which it operates the Cable System.

## SECTION 10

## Franchise Fee

**10.1 Amount of Fee.** Grantee shall pay to the Franchising Authority an annual franchise fee in an amount equal to five percent (5%) of the annual Gross Revenue, excluding Internet services. Such payment shall be in addition to any other taxes or permit fees of general applicability owed to the Franchising Authority by the Grantee that are not included as franchise fee under federal law.

**10.2 Payment of Fee.** The fee due the Franchising Authority shall be made on a quarterly basis, within forty-five (45) days of the close of each calendar quarter. The payment period shall commence as of the Effective Date of the Franchise. Each payment shall be accompanied by a written report to Franchising Authority, verified by a financial representative containing a detailed breakdown of the various components of the total revenue reported, including the number of customers served by basic cable service.

**10.3 Accord and Satisfaction.** No acceptance of any payment by the Franchising Authority shall be construed as a release or as an accord and satisfaction of any claim the Franchising Authority may have for further or additional sums payable as a franchise fee under this Franchise or for the performance of any other obligation of the Grantee.

**10.4 Limitation on Recovery.** In the event that any Franchise payment or recomputed payment is not made on or before the dates specified herein, Grantee shall pay an interest charge, computed from such due date, at the annual rate of one percent over the prime interest rate. The period of limitation for recovery of any franchise fee payable hereunder shall be three (3) years. Any additional amount due Franchising Authority shall be paid within sixty (60) days of Franchising Authority's submitting an invoice for such sum providing Grantee does not contest same, and if such sum shall exceed four percent (4%) of the total Franchise Fee which an audit determines should have been paid for any previous calendar years, Grantee shall also pay Franchising Authority's cost of auditing those calendar years as well. Any amounts overpaid by the Grantee shall be deducted from future franchise fee payments.

## SECTION 11
## Transfer of Franchise

**11.1 Franchise Transfer.** The Franchise granted hereunder shall not be sold, transferred, leased or assigned, including but not limited to, by forced or voluntary sale, receivership, or other means without the prior consent of the Franchising Authority, such consent not to be unreasonably withheld or delayed. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or Cable System to secure indebtedness. Within thirty (30) calendar days of receiving a request for transfer, the Franchising Authority shall notify the Grantee in writing of any additional information it reasonably requires to determine the legal, financial and technical qualifications of the transferee. If the Franchising Authority has not taken action on the Grantee's request for transfer within one hundred twenty (120) calendar days after receiving such request, consent by the Franchising Authority shall be deemed given.

**11.2 Transfer Without Consent Deemed Violation.** By its acceptance of this Franchise, the Grantee specifically grants and agrees that any such sale, assignment or transfer of the Franchise occurring without prior approval of the Franchising Authority in accordance with Section 11.1 above shall constitute a violation of this Franchise by the Grantee.

**11.3 Transfer to Affiliates.** The foregoing requirements shall not apply to any sale, assignment or transfer to any Person that is owned or controlled by the Grantee, or any Person that owns or controls the Grantee. Grantee shall notify the Franchising Authority thirty (30) calendar days prior to any such sale, assignment or transfer.

## SECTION 12
## Records, Reports and Maps

**12.1 Reports Required.** The Grantee's schedule of charges, contract or application forms for regular Subscriber service, policy regarding the processing of Subscriber complaints, delinquent Subscriber disconnect and reconnect procedures and any other terms and conditions adopted as the Grantee's policy in connection with its Subscribers shall be filed with the Franchising Authority upon request.

**12.2 Records Required.** The Grantee shall at all times maintain and make available to the Franchising Authority within thirty (30) calendar days of a written request, provided however that Franchising Authority may not request documents referenced in Section 12.2 more often than once a year:

A. A record of all written complaints received regarding interruptions or degradation of Cable Service shall be maintained for two (2) years.

B. A full and complete set of plans, records and strand maps showing the location of the Cable System. Notwithstanding the provisions of this section, if Grantee has no facility extensions from one year to the next this requirement shall be waived; otherwise it shall be submitted annually to the Franchising Authority.

C. Grantee shall make available to a duly authorizied representative of the Franchising Authority, upon written request, its books and records to examine, audit, review and/or obtain copies of the papers, books, accounts, documents, maps, plans and other records of Grantee pertaining to compliance with its franchise. Grantee shall provide electronic copies of its books and records if available, and paper copies if electronic copies are not available. Grantee shall fully cooperate in making available its records and otherwise assisting in these activities. Grantee may require the Franchising Authority, or any of its employees, agents or representatives who will have access to such information to sign a confidentiality agreement, subject to state law, prior to the release of any of this information. The confidentiality provisions in Sec. 12.3 shall also apply in situations under Sec. 12.2. The Franchising Authority shall, in good faith, make every effort to accommodate Grantee by viewing on Grantee’s premises, such data or documents that Grantee identifies as being of a highly competitive or of a confidential or proprietary nature, provided however, Grantee shall provide Franchising Authority at Franchising Authority’s place of business or other designated location, with such financial documents as are reasonably necessary for the Franchising Authority to conduct an audit to determine the accuracy of past franchise fee payments.

**12.3 Inspection of Records.** Grantee shall permit any duly authorized representative of the Franchising Authority, upon receipt of advance written notice to examine during normal business

hours and on a nondisruptive basis any and all records as is reasonably necessary to ensure Grantee's compliance with the Franchise. Such notice shall specifically reference the subsection of the Franchise that is under review so that the Grantee may organize the necessary books and records for easy access by the Franchising Authority. The Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years, except for service complaints, which shall be kept for two (2) years as specified in Section 12.2.A and Exhibit A.14, and franchise fee revenue detail, which shall be kept as specified above in Section 10.4. The Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act. To the extent allowed by law, the Franchising Authority agrees to treat as confidential any books, records, or maps that constitute proprietary or confidential information to the extent Grantee make the Franchising Authority aware of such confidentiality. If the Franchising Authority believes it must release any such confidential books or records in the course of enforcing this Franchise, or for any other reason, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. Until otherwise ordered by a court or agency of competent jurisdiction, the Franchising Authority agrees that, to the extent permitted by state and federal law, it shall deny access to any of Grantee's books and records marked confidential, as set forth above, to any Person.

## SECTION 13
## Community Programming

**13.1 Service to Schools and Buildings.** The Grantee shall continue to maintain, without charge, one outlet to each State accredited Public School, located in the Service Area served by the Cable System and will provide each accredited Public School free Basic and Expanded Basic Cable Service, for so long as the Cable System remains in operation in the Service Area. Any such school may install, at its expense, such additional outlets for classroom purposes as it desires, provided that such installation shall not interfere with the operation of Grantee's Cable System, and that the quality and manner of installation of such additional connections shall have been approved by the Grantee and shall comply with all local, State and federal laws and regulations. In addition, the Grantee shall furnish to the Franchising Authority, without installation or monthly charges, one outlet to each Police and Fire Station, and to any owned and occupied administration building of the Franchising Authority, hereinafter referred to Public Buildings. In recognition of the contribution that the Grantee is providing to the Franchising Authority with such free services, Grantee shall be entitled to place a sign in the public facilities that identifies the Grantee's contribution and to mention such contribution in any marketing or publicity materials that Grantee provides to its customers. Grantee shall provide such free service as described above to any new constructed school or public building within six (6) months of Franchising Authority's request, provided such building is within one hundred fifty (150) feet of Grantee's Cable System.

**13.2 Limitations on Use.** The Cable Service provided pursuant to this Section shall not be used for commercial purposes and such outlets shall not be located in areas open to the public. The Franchising Authority shall take reasonable precautions to prevent any use of the Grantee's Cable System that results in the inappropriate use thereof or any loss or damage to the Cable System. The Franchising Authority shall hold the Grantee harmless from any and all liability or claims arising out of the provision and use of Cable Service required by subsection 13.1 above. The Grantee shall not be required to provide an outlet to any such building where a standard drop of more than one hundred fifty (150) feet or additional electronics are required, unless the Franchising Authority building owner/occupant agrees to pay the incremental cost of any necessary extension or installation.

**13.3 Educational and Government (EG) Channel Requirements and Funding Requirements.** Upon request by the Franchising Authority, Grantee shall provide one channel on the Cable System for use by the Franchising Authority for non-commercial, video programming for education and government (EG) access programming. At such time that the EG Channel is programmed with 25% programming, measured on a daily basis over a four (4) month period, then upon the written request of the Franchising Authority, Grantee shall provide, within sixty (60) days of such written notice and at no cost to the Franchising Authority a second channel, subject to the requirements of Section 13.4, which shall also be designated for non-commercial programming purposes. The requirements of this section (13.3) will be waived by Franchising Authority until Grantee has three thousand (3000) customers subscribing to at least Basic Cable Services.

**13.4 Educational Government (EG) Equipment.** Grantee shall maintain a return path and all equipment necessary for the Franchising Authority to transmit EG Channels from the City Administration building or some other building as designated by the City, provided however that such site is located along Grantee's activated return path fiber facilities. Said equipment is limited to transmit and receive equipment and does not include cameras, editing, playback equipment or any other equipment the Franchising Authority may need in order to create programming on the Franchising Authority's EG channels.

**13.5 Educational Government (EG) Funding.** Upon request by the Franchising Authority, and activation of the channel referenced in Section 13.3, Grantee shall collect and pay Franchising Authority an amount equal to One Dollar ($1.00) per Basic Cable Services customer per month and remit such amount to Franchising Authority in conjunction with franchise fee payments, provided however any such EG Funding payments shall be itemized separately on the customer's bill and on the payment to the Franchising Authority. All EG Funding must be used by Franchising Authority solely for capital expenditures related to the EG Access Channel(s).

**13.5.1** If Grantee provides a studio and associated equipment to the Franchising Authority for the purposes of providing programming for the EG channels, then Grantee shall be entitled to a credit against all monies incurred for such capital equipment against the EG funding requirement in Section 12.5, provided however that the credited amount shall not exceed One Hundred Thousand Dollars ($100,000.00).

## SECTION 14
## Enforcement and Revocation

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

**14.2 Grantee's Right to Cure or Respond.** The Grantee shall have thirty (30) calendar days from receipt of the notice described in subsection 14.1 to (i) respond to the Franchising Authority, contesting the assertion of noncompliance, or (ii) to cure such default, or (iii) if, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the Franchising Authority of the steps being taken and the projected date that they will be completed.

**14.3 Public Hearing.** If the Grantee fails to respond to the notice received from the Franchising Authority pursuant to the procedures set forth in subsection 14.2, or if the default is

not remedied within the cure period set forth above, the Board shall schedule a public hearing if it intends to continue its investigation into the default. The Franchising Authority shall provide the Grantee at least twenty calendar (20) days prior written notice of such hearing, which specifies the time, place and purpose of such hearing, notice of which shall be published by the Clerk of the Franchising Authority in a newspaper of general circulation within the Franchising Authority in accordance with subsection 15.5 hereof.

**14.4 Enforcement.** Subject to applicable federal and state law, in the event the Franchising Authority, after the hearing set forth in subsection 14.3 above, determines that the Grantee is in default of any provision of the Franchise, the Franchising Authority may:

Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or Commence an action at law for monetary damages or seek other equitable relief; or
In the case of a substantial default of a material provision of the Franchise, seek to revoke the Franchise itself in accordance with subsection 14.5 below.

(a) In addition to any other remedies available at law or equity, the Franchising Authority has the right to apply any one or combination of the following remedies in the event a Grantee violates any Franchising Authority Ordinance , its franchise agreement, or applicable state or federal law:

(1) Liquidated Damages. The Franchising Authority may impose liquidated damages in the following amounts. Payment of liquidated damages by the Grantee will not relieve the Grantee of its obligation to comply with the franchise agreement and Ordinance requirements.

(A) For failure to substantially complete system construction or line extensions as required, unless the Franchising Authority specifically approves a delay for good cause shown, Grantee shall pay up to One thousand Dollars ($1,000) per day for each day, or part thereof, the deficiency continues.

(B) For material failure to provide data, documents, reports or information in a timely manner as required, Grantee shall pay up to Two Hundred Dollars ($200) per day, or part thereof, that each violation occurs or continues.

(C) For failure to substantially comply with the material provisions of Sections relating to: Minimum Facilities and Services, access channels and Technical Standards of this Franchise , Grantee shall pay up to One thousand Dollars ($1,000) per day for each day, or part thereof, that the violation continues.

(D) For failure to comply with the provisions of Sections relating to: Assignment or Lease of Franchise, Grantee shall pay up to One Thousand Dollars ($1,000) per day for each day, or part thereof, that the violation continues.

(E) For failure to comply with any other material provision of any Franchising Authority Ordinance or of a franchise agreement within fifteen (15) calendar days of receipt of notice of such non-compliance, the Grantee

shall pay up to Six Hundred Dollars ($600) per day for each day, or part thereof, that such non-compliance continues.

(F) For failure to substantially comply with reasonable orders of the Franchising Authority pursuant to the terms of the franchise, Grantee shall pay up to Two Hundred Dollars ($200) per day for each day, or part thereof, that noncompliance continues.

(G) Before assessing liquidated damages against Grantee, the Franchising Authority shall give Grantee written notice of its intention to assess such damages. Following receipt of such notice, Grantee and the Franchising Authority shall have a thirty (30) calendar day period during which time Grantee and the Franchising Authority shall make good faith reasonable efforts to resolve the dispute in question. If the dispute is not resolved in that thirty (30) calendar day period, the Franchising Authority may collect liquidated damages owed, either through drawdown of the security fund as provided in any Franchising Authority Ordinance, or through any other means allowed by law.

(b) In determining which remedy or remedies are appropriate, the Franchising Authority shall take into consideration the nature of the breach, the person or persons bearing the impact of the breach, and such other matters as the Franchising Authority determines are appropriate.

(c) In addition to or instead of any other remedy, the Franchising Authority may seek legal or equitable relief from any court of competent jurisdiction.

(d) Failure of the Franchising Authority to enforce any requirements of a franchise agreement or any Franchising Authority Ordinance shall not constitute a waiver of the Franchising Authority's right to enforce that violation or subsequent violations of the same type or to seek appropriate enforcement remedies.

(e) Notwithstanding other provisions of any Franchising Authority Ordinance, the fees, penalties, and procedures for the assessment of liquidated damages for non-compliance with the Customer Service and Consumer Protection requirements shall be as set forth in Exhibit A hereto.

**14.5 Revocation.**

A. Prior to revocation or termination of the Franchise, the Franchising Authority shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of a pattern of noncompliance by the Grantee, including one or more instances of substantial noncompliance with a material provision of the Franchise. The notice shall set forth the exact nature of the noncompliance. The Grantee shall have sixty (60) calendar days from such notice to object in writing and to state its reasons for such objection and provide any explanation. If the Franchising Authority has not received a satisfactory response from Grantee, it may then seek to revoke the Franchise at a public hearing. The Grantee shall be given at least ten (10) calendar days prior written notice of such public hearing, specifying the time and place of such hearing and stating its intent to revoke the Franchise.

B. At the hearing, the Council shall give the Grantee an opportunity to state its position on the matter, present evidence and question witnesses, after which it shall determine whether or not the Franchise shall be revoked. The public hearing shall be on the record and a written transcript shall be made available to the Grantee within ten (10) calendar days. The decision of the Council shall be made in writing and shall be delivered to the Grantee. The Grantee may appeal such determination to an appropriate court.

C. The Board shall hear any persons interested therein, and shall reasonably determine whether or not any default, failure, refusal or neglect by the Grantee was with just cause.

**14.6 Conditions of Sale After Revocation or Termination.** At the termination or revocation of the Franchise, as provided herein, Grantee shall, upon notice by the Franchising Authority, cease all operations and upon request by Franchising Authority remove at its own expense the Cable System from all Streets within the Service Area. Notwithstanding the foregoing, the Grantee may abandon any property in place in the public rights-of-way or public property upon written notice to the Franchising Authority. In the event that Grantee, upon written notice to Franchising Authority, abandons any property in place in the public right-of-way or public property, then Franchising Authority shall have the option of 1) within ninety (90) calendar days of the receipt of such notice and if the Franchising Authority determines that the safety, appearance, or use of the public rights-of-way would be adversely affected, the property must be removed by the Grantee by a date reasonably specified by the Franchising Authority in light of the amount of work to be performed: or 2) Franchising Authority may assign ownership of any property in place in the public right-of-way or public property to any third party, including itself.

## SECTION 15
## Miscellaneous Provisions

**15.1 Compliance with State and Federal Laws.** This franchise shall be governed by and construed in accordance with Federal law, the laws of the State of Tennessee and the City of Clarksville. Grantee further acknowledges by acceptance of this Franchise Agreement that it has carefully read the terms and conditions of this Franchise Agreement and any applicable cable ordinance of City, as it exists upon the execution date of this franchise agreement, and accepts the obligations imposed thereby regardless of whether such obligations are contained in the Franchise Agreement or such cable ordinance, or both. As of the Effective Date, and without waiving any rights Grantee may have to challenge the lawfulness or enforceability of this Franchise Agreement or ordinances in the future, Grantee does not contend that any provisions of the Franchise Agreement is unlawful or unenforceable, nor is it aware of any ordinance which it contends is unlawful or unenforceable. Notwithstanding any other provisions of this Franchise to the contrary, the Grantee shall at all times comply with all laws and regulations of the State and federal government or any administrative agencies thereof which relate to the conduct of Grantee's business. In the event of a conflict between any ordinance and this Franchise Agreement, the provisions of Sec. 2.4 supra shall apply.

**15.2 Force Majeure.** The Grantee shall not be held in default under, or in noncompliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control. This provision includes work delays caused by waiting for utility providers to service or monitor their utility poles to which Grantee’s Cable System is attached, as well as unavailability of materials. Furthermore, the parties hereby agree that it is not the Franchising Authority’s intention to subject the Grantee to penalties, fine, forfeitures or revocation of the Franchise for

violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on the Subscribers within the Franchise territory, or where strict performance would result in practical difficulties and hardship to the Grantee which outweighs the benefit to be derived by the Franchising Authority and/or Subscribers.

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

**15.4 Notices.** Notices. Except as otherwise specified herein, all notices, consents, approvals, requests and other communications (herein collectively "Notices") required or permitted under this Franchise Agreement shall be given in writing and mailed by registered or certified first-class mail, return receipt requested addressed as follows:

If to City:
Mayor
City of Clarksville
One Public Square
Clarksville, Tennessee 37040

If to Grantee:
Brian Taylor, Superintendent
Clarksville Department of Electricity
2021 Wilma Rudolph Boulevard
Clarksville, Tennessee 37043

All notices shall be deemed given on the day of mailing. Either party to this Franchise Agreement may change its address for the receipt of Notices at any time by giving notice thereof to the other as provided in this Section. Any notice given by any party hereunder must be signed by an authorized representative of such party.

**15.5 Public Notice.** After the effective date of this Renewal of Franchise Agreement, minimum public notice of any public meeting relating to this Franchise shall be by publication at least once in a newspaper of general circulation in the area at least ten (10) days prior to the meeting, posting at the administrative buildings of the Franchising Authority and by announcement on at least one (1) channel of the Grantee's Cable System, if possible, for five (5) consecutive days prior to the meeting.

**15.6 Severability.** If any section, subsection, sentence, clause, phrase, or portion of this Franchise is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Franchise.

**15.7 Entire Agreement.** This Franchise sets forth the entire agreement between the parties respecting the subject matter hereof. All agreements, covenants, representations and warranties, express and implied, oral and written, of the parties with regard to the subject matter hereof are contained herein. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made by any party to another with respect to the matter of this Franchise. All prior and contemporaneous conversations, negotiations, possible and alleged agreements, representations, covenants and warranties with respect to the subject matter hereof are waived, merged herein and therein and superseded hereby and thereby.

**15.8 Effective Date.** This Renewal of Franchise Agreement shall be effective thirty (30) calendar days after approval of same by the City Council.

Accepted this _____ day of _____, 2014, subject to applicable federal, state and local law.

**Clarksville Electric Power Board, Chairman**

Signature:_____

Name :_____

**CDE Lightband, Superintendent**

Signature:_____

Name:_____

**Exhibit A.**
**Customer Service Standards**

Section 76.309 FCC Customer Service Obligations

Cable system office hours and telephone availability. The cable operator will maintain a local, toll-free or collect call telephone access line which will be available to its subscribers 24 hours a day, seven days a week.

Trained company representatives will be available to respond to customer telephone inquires during normal business hours.

After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained company representative on the next business day.

Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less then ninety (90) percent of the time under normal operating conditions, measured on a quarterly basis.

The operator will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

Under normal operating conditions, the customer will receive a busy signal less than three (3) percent of the time.

Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located.

Installations, outages, and service calls. Under normal operating conditions, each of the following four standards will be met no less than ninety five (95) percent of the time measured on a quarterly basis:

Standard installations will be performed within seven (7) business days after an order has been placed. "Standard" installations are those that are located up to 125 feet from the existing distribution system.

Excluding conditions beyond the control of the operator, the cable operator will begin working on "service interruptions" promptly and in no event later than 24 hours after the interruption becomes known. The cable operator must begin actions to correct other service problems the next business day after notification of the service problem.

The "appointment window" alternative for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. (The operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.)

An operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

If a cable operator representative is running later for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

Communications between cable operators and cable subscribers.

Notifications to subscribers. The cable operator shall provide written information on each of the following areas at the time on installation of service, at least annually to all subscribers, and at any time upon request:

products and services offered:

prices and options for programming services and conditions of subscription to programming and other services;

installation and service maintenance policies;

instructions on how to use the cable service;

channel positions of programming carried on the system; and,

billing and complaint procedures, including the address and telephone number of the local franchise authority's cable office.

Customers will be notified of any changes in rates, programming services or channel positions as soon as possible through announcements on the cable system and in writing. Notice must be given to subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the cable operator. In addition, the cable operator shall notify subscribers thirty (30) days in advance of any significant changes in the other information required by the preceding paragraph.

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

In case of a billing dispute, the cable operator must respond to a written compliant from a subscriber within thirty (30) days.

Refunds. Refund checks will be issued promptly, no later than either:

the customer's next billing cycle following resolution of the request or thirty (30) days, whenever is earlier, or

the return of equipment supplied by the cable operator if service is terminated.

Credits. Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

**Definitions-**

Normal Business Hours. The terms "normal business hours" means those hours during which most similar businesses in the community are open to serve customers. In all cases, "normal business hours" must include some evening hours at least one night per week and/or some weekend hours.

Normal Operating Conditions. The term "normal operating conditions" means those service conditions which are within the control of the cable operator. Those conditions which are not within the control of the cable operator include, but are not limited, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the cable operator include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system.

Service Interruption. The term "service interruption" means the loss of picture or sound on one or more cable channels.

Liquidated Damages

(a) The Service Standards required in this Section shall be applicable to Franchisee's call service center.

(b) The liquidated damages applicable to Franchisee for non-compliance with one or more of the customer service standards and the service installation standards set forth in Exhibit A shall be as follows:

(i) If, after January 1, 2015, Franchisee fails in any calendar quarter to comply with any of the performance standards listed in Exhibit A, Franchisee shall incur liquidated damages in the amount of Eighteen Thousand and No/100 Dollars ($18,000.00). These liquidated damages shall be paid by Franchisee to the Franchising Authority within fifteen (15) calendar days after the end of every calendar quarter in which franchisee fails to meet the standards set forth in Exhibit A.

(ii) The amount of the liquidated damage payment shall increase every year by the percentage yearly increase in the Consumer Price Index. Such increases shall be effective on the annual anniversaries of the effective date of the franchise, commencing with the first anniversary.

ORDINANCE 30-2014-15

AN ORDINANCE RENEWING A FRANCHISE AGREEMENT BETWEEN THE CITY OF CLARKSVILLE AND THE CLARKSVILLE DEPARTMENT OF ELECTRICITY *LIGHTBAND* AND THE CLARKSVILLE ELECTRIC POWER BOARD AND SPECIFYING THE TERMS AND CONDITIONS OF THAT CABLE TELEVISION ~~TELEPHONE AND INTERNET~~ SERVICE FRANCHISE

*WHEREAS,* the City of Clarksville has been authorized by the State of Tennessee to grant franchises for the operation of cable television~~, telephone and internet~~ service within the City of Clarksville, Tennessee; and

*WHEREAS,* the City of Clarksville has previously granted a non-exclusive franchise to the Clarksville Department of Electricity *Lightband* for cable television~~, telephone and internet~~ service within the City, pursuant to Ordinance 87-2010-11, and

*WHEREAS,* said non-exclusive franchise is due to expire December 31, 2014, and

*WHEREAS,* the City has received a request from the Clarksville Department of Electricity *Lightband* and the Clarksville Electric Power Board to renew the current cable television, ~~telephone and internet~~ service franchise agreement, and

*WHEREAS,* the City has considered the terms and conditions of the City's current cable franchise agreement with ~~CDEL~~ CDE Lightband and with other cable television~~, telephone and internet~~ service provider franchisees, and

*WHEREAS,* City has determined that renewal of the ~~CDEL~~ CDE Lightband franchise on the terms set forth in the attached Franchise Agreement attached herein as Exhibit A is in the public interest and will assist in meeting the cable television~~, telephone and internet~~ service related needs and interests of City residents and the entire community.

*NOW, THEREFORE,* the Clarksville City Council hereby approves the renewal of the cable television~~, telephone and internet~~ service franchise for the Clarksville Department of Electricity Lightband ~~(CDEL)~~ in accordance with the terms and provisions of the attached Franchise Renewal Agreement attached hereto and incorporated herein as Exhibit A.

*FIRST READING:* November 17, 2014
*SECOND READING:*
*THIRD READING:*
*EFFECTIVE DATE:*

# RENEWAL OF FRANCHISE AGREEMENT

This Renewal of Franchise Agreement is between the City of Clarksville, Tennessee hereinafter referred to as the "Franchising Authority" and the Clarksville Department of Electricity Lightband ~~(CDEL)~~/ Electric Power Board, hereinafter referred to as the "Grantee."

The Franchising Authority hereby acknowledges that the financial, legal and technical ability of the Grantee is sufficient to provide services, facilities and equipment necessary to meet the future cable-related television~~, telephone, and internet~~ service needs of the community, and having afforded the public adequate notice and opportunity for comment, desires to enter into this Franchise Agreement with the Grantee for the operation, improvement, and maintenance of a cable television~~, telephone and internet~~ service system on the terms set forth herein.

## SECTION 1
## Definition of Terms

**1.1 Terms.** For the purpose of this franchise the following terms, phrases, words and their derivations shall have the meaning ascribed to them in the Cable Communications Policy Act of 1984, as amended from time to time (the "Cable Act"), unless otherwise defined herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

"Basic Cable" shall mean the lowest priced tier of Cable Service that includes the delivery of broadcast signals and any educational and governmental access channels.

"Council" shall mean the City Council of Clarksville, Tennessee.

"Cable Act" shall mean the Cable Communication Policy Act of 1984, as amended, 47 U.S.C. §§ 521, et. seq.

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

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

"FCC" shall mean the Federal Communications Commission and any successor governmental entity thereto.

"Franchise Authority" shall mean the City of Clarksville, Tennessee.

"Franchise" shall mean the non-exclusive rights granted pursuant to this franchise to construct, improve, operate, and maintain a television~~, telephone and internet~~ service Cable System along the public ways within all or a specified area in the Service Area.

"Grantee" shall mean the Clarksville Department of Electricity or its lawful successor, transferee or assignee.

“Gross Revenue” shall mean all cash compensation or revenues of any kind or nature received directly or indirectly by the Grantee, its subsidiaries or parent which are cable operators, arising from, attributable to, or in any way derived from the provision of cable services by the Grantee within the City, as long as all such gross revenues are in accordance with Generally Accepted Accounting Principals, provided, however, that such phrase shall not include: (1) any local, state or federal tax or the FCC User Fee; (2) unrecovered bad debt; (3) and any EG amounts recovered from Subscribers. Gross Revenues includes, but is not limited to, monthly fees charged to subscribers for basic service; monthly fees charged to subscribers for any optional, premium or per-channel or per-program service; monthly fees charged to subscribers for any tier of service other than basic service; installation, disconnection, re-connection, franchise fees collected from subscribers; change-in-service fees; leased channel fees; late fees; converter fees, rentals or sales; advertising revenues; and revenues derived by the Grantee from home shopping channel sales to susbcribers. Advertising and home shopping revenues shall be allocated on a pro-rata basis based on the proportion of total subscribers on Grantee’s cable system represented by subscribers residing within the franchise area, provided they cannot be calculated on a per-franchise basis. Gross Revenues as here defined shall be the basis for computing the franchise fee.

"Installation" shall mean the connection of the Cable System from feeder cable to Subscribers' terminals.

"Person" shall mean an individual, partnership, association, organization, corporation or any lawful successor, transferee or assignee of said individual, partnership, association, organization or corporation.

"Public School" shall mean any State accredited school at any educational level operated within the Service Area by any public, private or parochial school system, but limited to, elementary, junior high school, and high school.

"Reasonable notice" shall be written notice addressed to the Grantee at its principal office or such other office as the Grantee has designated to the Franchise Authority as the address to which notice should be transmitted to it.

"Service Area" shall mean the geographic boundaries of the Franchise Authority, and shall include any additions thereto by annexation or other legal means, subject to the exception in subsection 6.1 hereto.

"State" shall mean Tennessee.

"Street" shall include each of the following which have been dedicated to the public or hereafter dedicated to the public and maintained under public authority or by others and located within the Service Area: streets, roadways, highways, bridges, land paths, boulevards, avenues, lanes, alleys, sidewalks, circles, drives, easements, rights-of-way and similar public ways and extensions and additions thereto, including but not limited to public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses now or hereafter held by the Franchising Authority in the Service Area, which shall entitle the Grantee to the use thereof for the purpose of installing, operating, repairing and maintaining the Cable System..

"Subscriber" shall mean any person lawfully receiving Cable Service from the Grantee.

## SECTION 2
## Grant of Franchise

**2.1 Grant.** The Franchising Authority hereby grants to the Grantee a nonexclusive Franchise which authorizes the Grantee to erect, construct, operate and maintain in, upon, along, across, above, over and under the Streets, now in existence and as may be created or established during its terms; any poles, wires, cable, underground conduits, manholes, and other conductors and fixtures necessary for the maintenance and operation of a Cable System. Nothing in this Franchise shall be construed to prohibit the Grantee from offering any service over its Cable System that is not prohibited by federal, State or local law.

**2.2 Term.** The Franchise and the rights, privileges and authority hereby granted shall be for an initial term of five years ( 5) years commencing on the Effective Date of this Franchise of January 1, 2015, and ending on December 31, 2020, as set forth in subsection 15.8, unless otherwise lawfully terminated in accordance with the terms of this Franchise.

**2.3 Additional Franchises.**

2.3.1 Additional Cable Franchise, Construction or Operation in More Favorable Terms. If, following the Effective Date, another multichannel video provider (MCVP) constructs and/or operates a cable system in Franchising Authority's jurisdiction, whether or not franchised by a process similar to Grantee's, and the Grantee believes that said MCVP's franchise or unfranchised operating situation bestows benefits and imposes burdens on such third party which on balance, are materially more advantageous to such third party than the benefits bestowed and imposed on the Grantee by this Agreement are to the Grantee, then, at any time, the Grantee may request that the Franchising Authority make a determination to such effect and, in the event of such a determination, request renegotiation of terms and conditions of this Agreement as provided below. The Franchising Authority shall provide advance written public notice of any third party application to obtain an Additional Cable Franchise Agreement.

2.3.2 Procedure. In the event of such a request, the Franchising Authority will consult with the Grantee to determine, under its standard procedures, whether the Additional Cable Franchise Agreement or unfranchised operating situation bestows benefits and imposes burdens on the third party, which on balance, are materially more advantageous to the third party than the benefits and burdens imposed by this Agreement are to the Grantee.

2.3.3 In making a determination under this subsection, the Franchising Authority will consult with the Grantee to consider factors such as, but not limited to: (i) the term of the franchise; (ii) the franchise fee to be paid by each Grantee, including the Grantee herein; (iii) the number and density of dwelling units to be served; (iv) differences in construction, operational and maintenance costs; (v) differences in required system characteristics, including state-of-the-art requirements; (vi) differences in service obligations, including EG Access and institutional service requirements; (vii) differences in permitted Grantee fees and charges; and (viii) such other factors and considerations as it considers to be relevant to an inquiry into the overall economic, technical and operational comparability of the agreements or situations. If the Franchising Authority determines that the Additional Cable Franchise Agreement or unfranchised operating situation bestows benefits and imposes burdens on the third party which, on balance, are materially more advantageous to the third party than the benefits bestowed and burdens imposed by this agreement are to the Grantee, then upon the Grantee's request, the Franchising Authority and the Grantee shall enter into good faith negotiations to seek to modify this Agreement to bestow benefits and impose burdens which, on balance, create overall

economic, technical and operational comparability between this Agreement and the Additional Cable Franchise Agreement or unfranchised operating situation.

**2.4 Police Powers and Conflicts with Franchise.** In accepting this Franchise, the Grantee acknowledges that its rights hereunder are subject to the police power of the Franchising Authority to adopt and enforce the laws and regulations of general applicability necessary to the safety and welfare of the public; and it agrees to comply with all applicable general laws and franchises enacted by the Franchising Authority pursuant to such power. Subject to its lawful police powers, the Franchising Authority may not, by franchise or otherwise, alter any of the Grantee's material rights, benefits, obligations or duties as specified in this Franchise. In the event of a conflict between any ordinance and this Franchise, this Franchise shall control, provided, however, that the Grantee agrees that it is subject to the lawful police power of the Franchising Authority.

**2.5 Cable System Franchise Required.** No Cable System shall be allowed to occupy or use the streets or public rights- of -way of the Service Area or be allowed to operate without a Cable System Franchise to the extent that the Franchising Authority is allowed by law to require one**.**

## SECTION 3
## Franchise Renewal

**3.1 Procedures for Renewal.** The Franchising Authority and the Grantee agree that any proceedings undertaken by the Franchising Authority that relates to the renewal of the Grantee's Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, or any such successor statute.

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

## SECTION 4
## Indemnification and Insurance

**4.1 Indemnification.** The Grantee shall, by acceptance of the Franchise granted herein, defend the Franchising Authority, its officers, boards, commissions, agents, and employees for all claims for injury to any person or property caused by the negligence of Grantee in the construction, installation, or maintenance operation of the Cable System and in the event of a determination of liability shall indemnify and hold Franchising Authority, its officers, boards, commissions, agents, and employees harmless from any and all liabilities, claims, demands, or judgments growing out of any injury to any person or property as a result of the violation or failure of Grantee to observe its proper duty or because of the negligence of Grantee arising out of the construction, repair, extension, maintenance, operation or removal of its wires, poles or other equipment of any kind or character used in connection with the operation of the Cable System, provided that the Franchising Authority shall give the Grantee written notice of its obligation to indemnify the Franchising Authority within ten (10) days of receipt of a claim or

action pursuant to this section. Notwithstanding the foregoing, the Grantee shall not be obligated to indemnify the Franchising Authority for any damages, liability or claims resulting from the willful misconduct or negligence of the Franchising Authority or for the Franchising Authority's use of the Cable System, including any EG channels

**4.2 Insurance and Bond.**

The Grantee shall maintain throughout the term of the Franchise insurance in amounts at least as follows:

| | |
|---|---|
| Workers' Compensation | Statutory Limits – to the extent required by law |
| Commercial General Liability | $1,000,000 per occurrence, Combined Single Liability (C.S.L.) $2,000,000 General Aggregate or the maximum amount of liability of the Franchisee pursuant to state law, whichever is less |
| Auto Liability including coverage on all owned, non-owned hired autos | $1,000,000 per occurrence C.S.L. or the maximum amount of liability of the Franchisee pursuant to state lawm whichever is less |
| Umbrella Liability | $1,000,000 per occurrence C.S.L. or the maximum amount of liability of the Franchisee pursuant to state law, whichever is less |

The Franchising Authority shall be added as an additional insured to the above Commercial General Liability, Auto Liability and Umbrella Liability insurance coverage. The Grantee shall furnish the Franchising Authority with current certificates of insurance evidencing such coverage.

**4.3 Bond.** General Requirement for Bond. In the event of an upgrade to the system, Grantee shall furnish to the Franchising Authority a performance bond, which shall comply with the terms and provisions of any ordinance of general applicability and both of the Cable Ordinance and this Agreement, which shall be in the minimum amount of $50,000, while the upgrade is in progress. Upon completion of the upgrade in the franchised area, Grantee shall furnish to the Franchising Authority a performance bond, which shall comply with the terms and provisions of this Agreement, which shall be in the minimum amount of $25,000. Not withstanding the foregoing, Grantee shall maintain a bond in the amount of $25,000 throughout the term of this agreement.

**4.4 Indemnification.** The Performance Bond shall indemnify the Franchising Authority, up to the full face amount of the Performance Bond, for (i) any unreimbursed loss or damage to the Streets or any property of the City caused by the Grantee during the construction, installation, operation, upgrade, repair, maintenance or removal of Equipment; or (ii) any other unreimbursed cost, loss or damage actually incurred by the

City as a result of the Grantee's failure to perform its material obligations pursuant to this Agreement.

**4.5 Other Purposes.** The Performance Bond also shall serve as security for:

(a) The faithful performance by the Grantee of material terms, conditions and obligations of this Agreement, including, but not limited to, the insurance requirements set forth in Section 4 or compensation requirements set forth in Section 10;

(b) Any unreimbursed expenditure, damage or loss incurred by the Franchising Authority occasioned by the Grantee's material failure to comply with all rules, regulations, orders, permits and other lawful directives of the Franchising Authority issued pursuant to this Agreement;

**4.6. Not a Limit on Liability.** The obligation to perform under, and the liability of the Grantee pursuant to, this Agreement shall not be limited by the acceptance of the Performance Bond required by this Section.

## SECTION 5
## Service Obligations

**5.1 No Discrimination.** Grantee shall not deny service, deny access, or otherwise discriminate against Subscribers, channel users, or general citizens on the basis of race, color, religion, national origin, age or sex. Grantee shall comply at all times with all other applicable federal, State and local laws and regulations.

**5.2 Privacy.** The Grantee shall fully comply with any provisions regarding the privacy rights of Subscribers contained in applicable federal or State law subject to the requirements of Tenn. Code Ann. § 10-7-503 and § 10-7-504.

**5.3 Rates.** Grantee shall establish rates that are nondiscriminatory within the same general class of Subscribers. Nothing contained herein shall prohibit the Grantee from offering (i) discounts to commercial and multiple family dwelling Subscribers billed on a bulk basis; (ii) promotional discounts; (iii) reduced installation rates for Subscribers who have multiple services ;or (iv) discounted rates in those portions of the Service Area subject to competition.

## SECTION 6
## Service Availability

**6.1 Service Area.** The Grantee shall make Cable Service distributed over the Cable System available to every dwelling unit within the Service Area reaching the minimum density of at least twenty-five (25) dwelling units per mile at its published rates for Installation. The Grantee may elect to provide Cable Service to areas not meeting the above standards.

**6.2 Service to New or Previously Unserved Single Family Dwellings.** The Grantee shall offer Cable Service to all new homes or previously unserved single dwellings located within one hundred fifty (150) feet of Grantee’s feeder cable at its published rates for standard Installation subject to provisions of 6.1.

**6.3 Service to New Subdivisions.** Grantee shall make cable service available to dwelling units within the City where the dwelling unit is in an area which Grantee has completed

construction of its facilities, where the minimum density is twenty-five (25) dwelling units per cable mile or greater, and provided such dwelling units are located within one hundred fifty (150) feet of Grantee's distribution system. A dwelling unit in a new subdivision shall be considered a dwelling unit if a dwelling unit foundation has been erected and electric ~~or telephone~~ facilities have been installed to ~~provision~~ provide electric ~~or telephone~~ service to said dwelling unit. Grantee shall extend such service within six (6) months of a request by a resident of the development

**6.4 Service to Annexed Areas.** Grantee shall offer Cable Service to any area described in any annexation franchise passed after the Effective Date of this Franchise, within one (1) year after the effective date of such annexation franchise, except that Cable Service shall not be required if similar existing Cable Service is in place or if the density of homes is less than that required in Section 6.1 or dwelling units are more than one hundred fifty (150) feet from Grantee's distribution system. If Franchising Authority annexes any area during the term of this agreement, Franchising Authority shall provide written notice to the Grantee at the addresses as provided in Section 15.4 within thirty (30) days of said action.

**6.5 Additional Service.** Grantee may elect to offer Cable Service to areas not meeting the above standards. The Grantee may impose an additional charge in excess of its regular installation charge for any Cable Service Installation requiring a service drop in excess of the above standards. This additional charge shall be computed on a time plus materials basis to be calculated on that portion of the Installation that is above and beyond one hundred fifty (150) feet.

**6.6 New Development Underground.** In cases of new construction or property development where utilities are to be placed underground, the Franchising Authority agrees to require as a condition of issuing a permit for open trenching to any developer or property owner that such developer or property owner give Grantee at least thirty (30) days prior notice of such construction or development, and of the particular date on which open trenching will be available for Grantee's installation of conduit, pedestals and/or vaults, and laterals to be provided at Grantee's expense. Grantee shall also provide specifications as needed for trenching. Costs of trenching and easements required to bring service to the development shall be borne by the developer or property owner; except that if Grantee fails to install its conduit, pedestals and/or vaults, and laterals within five (5) working days of the date the trenches are available, as designated in the notice given by the developer or property owner, then should the trenches be closed after the five-day period, the cost of new trenching is to be borne by Grantee.

## SECTION 7.
## Construction and Technical Standards

**7.1 Compliance with Codes.** All construction practices and installation of equipment shall be done in accordance with all applicable sections of the Occupational Safety and Health Act of 1970 and the National Electric Safety Code.

**7.2 Construction Standards and Requirements.** All transmission lines, equipment and structures shall be so installed and located as to cause minimum interference with the rights and reasonable convenience of property owners and at all times shall be kept and maintained in a safe, adequate and substantial condition, and in good order and repair. The Grantee shall, at all times, employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public. Suitable barricades, flags, lights, flares or other devices shall be used at such times and places as are reasonably required for the safety of all members of the public. Any

poles or other fixtures placed in any public way by the Grantee shall be placed in such a manner as not to interfere with the usual travel on such public way. All of the Grantee's plant and equipment, including but not limited to the antenna site, head-end and distribution system, towers, house connections, structures, poles, wire, cable, coaxial cable, fixtures and appurtenances shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with good engineering practices and performed by experienced maintenance and construction personnel.

**7.3 Safety.** The Grantee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage,

**7.4 Network Technical Requirements.** The Cable System shall be operated so that it is capable of continuous twenty-four (24) hour daily operation, capable of meeting or exceeding all applicable federal technical standards, as they may be amended from time to time, and operated in such a manner as to comply with all applicable FCC rules and regulations.

**7.5 Performance Monitoring.** Grantee shall test the Cable System as required in paragraph 76.609, Subpart K of the FCC Rules and Regulations. To the extent that the report of measurements as required above may be combined with any reports of measurements required by the FCC or other regulatory agencies, the Franchising Authority shall accept such combined reports. The Franchising Authority may require additional tests, full or partial repeat tests - all solely to establish compliance with FCC technical standards - when there is evidence which casts doubt upon the reliability or technical quality of Cable Service on the basis of complaints received or other evidence indicating an unresolved controversy or significant non-compliance, and such tests will be limited to the particular matter in controversy. The Franchising Authority will endeavor to so arrange its requests for such additional tests so as to minimize hardship or inconvenience to Grantee or to the Subscriber. Any third party that implements “additional tests” shall be mutually agreed upon by both parties. Only Grantee personnel shall be allowed to manipulate the plant. If no reason for cure is found by the additional tests, Franchising Authority shall pay all costs associated with the test.

## SECTION 8
## Conditions on Street Occupancy

**8.1 General Conditions.** Grantee shall have the right to utilize existing poles, conduits and other facilities whenever possible, and shall not construct or install any new, different, or additional poles, conduits, or other facilities whether on public property or on privately owned property until the written approval of the Franchising Authority is obtained, which approval shall not be unreasonably withheld. However, no location of any pole or wire holding structure of the Grantee shall be a vested interest and such poles or structures shall be removed or modified by the Grantee whenever the Franchising Authority reasonably determines that the public convenience would be enhanced thereby. The costs for such removal or modification shall be paid by Grantee if all other users of the streets are also required to pay such costs for their facilities.

**8.2 Underground Construction.** The facilities of the Grantee shall be installed underground in those Service Areas where existing ~~telephone and~~ electric service~~s are~~ is ~~both~~ underground at the time of system construction. In areas where ~~either telephone or~~ electric utility facilities are installed aerially at the time of system construction, the Grantee may install its facilities aerially with the understanding that at such time as the existing aerial facilities are required to be placed

underground by the Franchising Authority, the Grantee shall likewise place its facilities underground.

**8.3 Permits.** The Franchising Authority shall cooperate with the Grantee in granting any permits required, which shall not be unduly delayed or withheld, providing such grant and subsequent construction by the Grantee shall not unduly interfere with the use of such Streets and that proposed construction shall be done in accordance with the pertinent provisions of the Franchise and franchises of the Franchising Authority.

**8.4 Restoration of Public Ways.** Grantee shall, at its own expense, restore any damage or disturbance caused to the public way as a result of its operation, construction, or maintenance of the Cable System to a condition reasonably comparable to the condition of the Streets immediately prior to such damage or disturbance.

**8.5 Removal in Emergency.** Whenever, in case of fire or other disaster, it becomes necessary in the judgment of the Franchising Authority to remove any of the Grantee's facilities, no charge shall be made by the Grantee against the Franchising Authority for restoration and repair, unless such acts amount to gross negligence by the Franchising Authority.

**8.6 Tree Trimming.** Grantee or its designee shall have the authority to trim trees on public property at its own expense as may be necessary to protect its wires and facilities.

**8.7 Relocation for the Franchising Authority.** The Grantee shall, upon receipt of reasonable advance written notice, to be not less than five (5) business days, protect, support, temporarily disconnect, relocate, or remove any property of Grantee when lawfully required by the Franchising Authority by reason of traffic conditions, public safety, street vacation, freeway or street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power line, signal line, transportation facilities, tracks, or any other types of public structure or improvements which are not used to compete with the Grantee's services. Grantee shall be responsible for any costs associated with these obligations to the same extent all other users of the Franchising Authority rights-of-way are responsible for the costs related to their facilities.

**8.8 Relocation for a Third Party.** The Grantee shall, on the request of any person holding a lawful permit issued by the Franchising Authority, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Street as necessary any property of the Grantee, provided that the expense of such is paid by any such person benefiting from the relocation and the Grantee is given reasonable advance written notice to prepare for such changes. The Grantee may require such payment in advance. For purposes of this subsection, "reasonable advance written notice" shall be no less than ten (10) calendar days in the event of a temporary relocation and no less than one hundred twenty calendar days (120) for a permanent relocation.

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

**8.10 Emergency Use.** Grantee shall provide an Emergency Alert System ("EAS"), in accordance with FCC standards. Franchising Authority shall permit only appropriately trained and authorized Persons to operate the EAS equipment and shall take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in inappropriate use

thereof, or any loss or damage to the Cable System. The Franchising Authority shall indemnify Grantee for any damages, liability or claims against Grantee resulting from the Franchising Authority's use of the EAS or its replacement.

**8.11 Use of Grantee Facilities.** The Franchising Authority shall have the right, during the life of this Franchise, to install and maintain free of charge upon the poles owned by the Grantee and conduit owned by the Grantee any wire and pole fixtures that do not unreasonably interfere with the current or future system operations of the Grantee. This right shall not apply to any facilities used by the Franchising Authority or other public or quasi-public body or entity funded in whole or part, directly or indirectly, by any government funds or entity to compete with Grantee. The Franchising Authority shall remove at its own expense any of the foregoing wire or pole fixtures within 60 (sixty) days of written request by Grantee to do so if such wire or pole fixtures, at some time after their placement, begin to interfere unreasonably with Grantee's operations.

## SECTION 9
## SERVICE REQUIREMENTS

**9.1 Phone.** The Grantee shall have a toll-free listed telephone and be so operated that complaints and requests for repairs or adjustments may be received at any time.

**9.2 Notification of Service Procedures.** The Grantee shall furnish each Subscriber at the time service is installed, written instructions that clearly set forth information concerning the procedures for making inquiries or complaints, including the Grantee's name, address and local telephone number. Grantee shall give the Franchising Authority thirty (30) days prior notice of any rate increases, channel lineup or other substantive service changes.

**9.3 Rate Regulation.** To the extent that Federal regulation may now, or as the same may hereafter be amended to, authorize the Franchising Authority to regulate the rates for any particular service tiers, service packages, equipment, or any other services provided by Grantee, the Franchising Authority shall have the right to exercise rate regulation to the full extent authorized by law, or to refrain from exercising such regulation for any period of time, at the sole discretion of the Franchising Authority. If and when exercising rate regulation, the Franchising Authority shall abide by the terms and conditions set forth by the FCC.

**9.4 Customer Service Standards**. Grantee shall be bound by the FCC's Customer Service Standards, as they may be amended from time to time. For reference only, the FCC Customer Service Standards, as they existed on the Effective Date of this Franchise Agreement, are reprinted in Exhibit A.

**9.5 Continuity of Service.** It shall be the right of all Subscribers to continue receiving Cable Service insofar as their financial and other obligations to the Grantee are honored. In the event that the Grantee elects to overbuild, rebuild, modify, or sell the Cable System, or the Franchising Authority gives notice of intent to terminate or fails to renew this Franchise, the Grantee shall act so as to ensure that all Subscribers receive continuous, uninterrupted service unless circumstances are beyond the control of the Grantee, unforeseen circumstances, or acts of God. In the event of a change of Grantee, or in the event a new operator acquires the Cable System, the Grantee shall cooperate with the Franchising Authority, new Grantee or operator in maintaining continuity of service to all Subscribers. During such period, Grantee shall be entitled to the revenues for any period during which it operates the Cable System.

## SECTION 10

## Franchise Fee

**10.1 Amount of Fee.** Grantee shall pay to the Franchising Authority an annual franchise fee in an amount equal to five percent (5%) of the annual Gross Revenue, excluding Internet services. Such payment shall be in addition to any other taxes or permit fees of general applicability owed to the Franchising Authority by the Grantee that are not included as franchise fee under federal law.

**10.2 Payment of Fee.** The fee due the Franchising Authority shall be made on a quarterly basis, within forty-five (45) days of the close of each calendar quarter. The payment period shall commence as of the Effective Date of the Franchise. Each payment shall be accompanied by a written report to Franchising Authority, verified by a financial representative containing a detailed breakdown of the various components of the total revenue reported, including the number of customers served by basic cable service.

**10.3 Accord and Satisfaction.** No acceptance of any payment by the Franchising Authority shall be construed as a release or as an accord and satisfaction of any claim the Franchising Authority may have for further or additional sums payable as a franchise fee under this Franchise or for the performance of any other obligation of the Grantee.

**10.4 Limitation on Recovery.** In the event that any Franchise payment or recomputed payment is not made on or before the dates specified herein, Grantee shall pay an interest charge, computed from such due date, at the annual rate of one percent over the prime interest rate. The period of limitation for recovery of any franchise fee payable hereunder shall be three (3) years. Any additional amount due Franchising Authority shall be paid within sixty (60) days of Franchising Authority's submitting an invoice for such sum providing Grantee does not contest same, and if such sum shall exceed four percent (4%) of the total Franchise Fee which an audit determines should have been paid for any previous calendar years, Grantee shall also pay Franchising Authority's cost of auditing those calendar years as well. Any amounts overpaid by the Grantee shall be deducted from future franchise fee payments.

## SECTION 11
## Transfer of Franchise

**11.1 Franchise Transfer.** The Franchise granted hereunder shall not be sold, transferred, leased or assigned, including but not limited to, by forced or voluntary sale, receivership, or other means without the prior consent of the Franchising Authority, such consent not to be unreasonably withheld or delayed. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or Cable System to secure indebtedness. Within thirty (30) calendar days of receiving a request for transfer, the Franchising Authority shall notify the Grantee in writing of any additional information it reasonably requires to determine the legal, financial and technical qualifications of the transferee. If the Franchising Authority has not taken action on the Grantee's request for transfer within one hundred twenty (120) calendar days after receiving such request, consent by the Franchising Authority shall be deemed given.

**11.2 Transfer Without Consent Deemed Violation.** By its acceptance of this Franchise, the Grantee specifically grants and agrees that any such sale, assignment or transfer of the Franchise occurring without prior approval of the Franchising Authority in accordance with Section 11.1 above shall constitute a violation of this Franchise by the Grantee.

**11.3 Transfer to Affiliates.** The foregoing requirements shall not apply to any sale, assignment or transfer to any Person that is owned or controlled by the Grantee, or any Person that owns or controls the Grantee. Grantee shall notify the Franchising Authority thirty (30) calendar days prior to any such sale, assignment or transfer.

## SECTION 12
## Records, Reports and Maps

**12.1 Reports Required.** The Grantee's schedule of charges, contract or application forms for regular Subscriber service, policy regarding the processing of Subscriber complaints, delinquent Subscriber disconnect and reconnect procedures and any other terms and conditions adopted as the Grantee's policy in connection with its Subscribers shall be filed with the Franchising Authority upon request.

**12.2 Records Required.** The Grantee shall at all times maintain and make available to the Franchising Authority within thirty (30) calendar days of a written request, provided however that Franchising Authority may not request documents referenced in Section 12.2 more often than once a year:

A. A record of all written complaints received regarding interruptions or degradation of Cable Service shall be maintained for two (2) years.

B. A full and complete set of plans, records and strand maps showing the location of the Cable System. Notwithstanding the provisions of this section, if Grantee has no facility extensions from one year to the next this requirement shall be waived; otherwise it shall be submitted annually to the Franchising Authority.

C. Grantee shall make available to a duly authorizied representative of the Franchising Authority, upon written request, its books and records to examine, audit, review and/or obtain copies of the papers, books, accounts, documents, maps, plans and other records of Grantee pertaining to compliance with its franchise. Grantee shall provide electronic copies of its books and records if available, and paper copies if electronic copies are not available. Grantee shall fully cooperate in making available its records and otherwise assisting in these activities. Grantee may require the Franchising Authority, or any of its employees, agents or representatives who will have access to such information to sign a confidentiality agreement, subject to state law, prior to the release of any of this information. The confidentiality provisions in Sec. 12.3 shall also apply in situations under Sec. 12.2. The Franchising Authority shall, in good faith, make every effort to accommodate Grantee by viewing on Grantee’s premises, such data or documents that Grantee identifies as being of a highly competitive or of a confidential or proprietary nature, provided however, Grantee shall provide Franchising Authority at Franchising Authority’s place of business or other designated location, with such financial documents as are reasonably necessary for the Franchising Authority to conduct an audit to determine the accuracy of past franchise fee payments.

**12.3 Inspection of Records.** Grantee shall permit any duly authorized representative of the Franchising Authority, upon receipt of advance written notice to examine during normal business

hours and on a nondisruptive basis any and all records as is reasonably necessary to ensure Grantee's compliance with the Franchise. Such notice shall specifically reference the subsection of the Franchise that is under review so that the Grantee may organize the necessary books and records for easy access by the Franchising Authority. The Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years, except for service complaints, which shall be kept for two (2) years as specified in Section 12.2.A and Exhibit A.14, and franchise fee revenue detail, which shall be kept as specified above in Section 10.4. The Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act. To the extent allowed by law, the Franchising Authority agrees to treat as confidential any books, records, or maps that constitute proprietary or confidential information to the extent Grantee make the Franchising Authority aware of such confidentiality. If the Franchising Authority believes it must release any such confidential books or records in the course of enforcing this Franchise, or for any other reason, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. Until otherwise ordered by a court or agency of competent jurisdiction, the Franchising Authority agrees that, to the extent permitted by state and federal law, it shall deny access to any of Grantee's books and records marked confidential, as set forth above, to any Person.

## SECTION 13
## Community Programming

**13.1 Service to Schools and Buildings.** The Grantee shall continue to maintain, without charge, one outlet to each State accredited Public School, located in the Service Area served by the Cable System and will provide each accredited Public School free Basic and Expanded Basic Cable Service, for so long as the Cable System remains in operation in the Service Area. Any such school may install, at its expense, such additional outlets for classroom purposes as it desires, provided that such installation shall not interfere with the operation of Grantee's Cable System, and that the quality and manner of installation of such additional connections shall have been approved by the Grantee and shall comply with all local, State and federal laws and regulations. In addition, the Grantee shall furnish to the Franchising Authority, without installation or monthly charges, one outlet to each Police and Fire Station, and to any owned and occupied administration building of the Franchising Authority, hereinafter referred to Public Buildings. In recognition of the contribution that the Grantee is providing to the Franchising Authority with such free services, Grantee shall be entitled to place a sign in the public facilities that identifies the Grantee's contribution and to mention such contribution in any marketing or publicity materials that Grantee provides to its customers. Grantee shall provide such free service as described above to any new constructed school or public building within six (6) months of Franchising Authority's request, provided such building is within one hundred fifty (150) feet of Grantee's Cable System.

**13.2 Limitations on Use.** The Cable Service provided pursuant to this Section shall not be used for commercial purposes and such outlets shall not be located in areas open to the public. The Franchising Authority shall take reasonable precautions to prevent any use of the Grantee's Cable System that results in the inappropriate use thereof or any loss or damage to the Cable System. The Franchising Authority shall hold the Grantee harmless from any and all liability or claims arising out of the provision and use of Cable Service required by subsection 13.1 above. The Grantee shall not be required to provide an outlet to any such building where a standard drop of more than one hundred fifty (150) feet or additional electronics are required, unless the Franchising Authority building owner/occupant agrees to pay the incremental cost of any necessary extension or installation.

**13.3 Educational and Government (EG) Channel Requirements and Funding Requirements.** Upon request by the Franchising Authority, Grantee shall provide one channel on the Cable System for use by the Franchising Authority for non-commercial, video programming for education and government (EG) access programming. At such time that the EG Channel is programmed with 25% programming, measured on a daily basis over a four (4) month period, then upon the written request of the Franchising Authority, Grantee shall provide, within sixty (60) days of such written notice and at no cost to the Franchising Authority a second channel, subject to the requirements of Section 13.4, which shall also be designated for non-commercial programming purposes. The requirements of this section (13.3) will be waived by Franchising Authority until Grantee has three thousand (3000) customers subscribing to at least Basic Cable Services.

**13.4 Educational Government (EG) Equipment.** Grantee shall maintain a return path and all equipment necessary for the Franchising Authority to transmit EG Channels from the City Administration building or some other building as designated by the City, provided however that such site is located along Grantee's activated return path fiber facilities. Said equipment is limited to transmit and receive equipment and does not include cameras, editing, playback equipment or any other equipment the Franchising Authority may need in order to create programming on the Franchising Authority's EG channels.

**13.5 Educational Government (EG) Funding.** Upon request by the Franchising Authority, and activation of the channel referenced in Section 13.3, Grantee shall collect and pay Franchising Authority an amount equal to One Dollar ($1.00) per Basic Cable Services customer per month and remit such amount to Franchising Authority in conjunction with franchise fee payments, provided however any such EG Funding payments shall be itemized separately on the customer's bill and on the payment to the Franchising Authority. All EG Funding must be used by Franchising Authority solely for capital expenditures related to the EG Access Channel(s).

**13.5.2** If Grantee provides a studio and associated equipment to the Franchising Authority for the purposes of providing programming for the EG channels, then Grantee shall be entitled to a credit against all monies incurred for such capital equipment against the EG funding requirement in Section 12.5, provided however that the credited amount shall not exceed One Hundred Thousand Dollars ($100,000.00).

## SECTION 14
## Enforcement and Revocation

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

**14.2 Grantee's Right to Cure or Respond.** The Grantee shall have thirty (30) calendar days from receipt of the notice described in subsection 14.1 to (i) respond to the Franchising Authority, contesting the assertion of noncompliance, or (ii) to cure such default, or (iii) if, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the Franchising Authority of the steps being taken and the projected date that they will be completed.

**14.3 Public Hearing.** If the Grantee fails to respond to the notice received from the Franchising Authority pursuant to the procedures set forth in subsection 14.2, or if the default is

not remedied within the cure period set forth above, the Board shall schedule a public hearing if it intends to continue its investigation into the default. The Franchising Authority shall provide the Grantee at least twenty calendar (20) days prior written notice of such hearing, which specifies the time, place and purpose of such hearing, notice of which shall be published by the Clerk of the Franchising Authority in a newspaper of general circulation within the Franchising Authority in accordance with subsection 15.5 hereof.

**14.4 Enforcement.** Subject to applicable federal and state law, in the event the Franchising Authority, after the hearing set forth in subsection 14.3 above, determines that the Grantee is in default of any provision of the Franchise, the Franchising Authority may:

Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or Commence an action at law for monetary damages or seek other equitable relief; or
In the case of a substantial default of a material provision of the Franchise, seek to revoke the Franchise itself in accordance with subsection 14.5 below.

(a) In addition to any other remedies available at law or equity, the Franchising Authority has the right to apply any one or combination of the following remedies in the event a Grantee violates any Franchising Authority Ordinance , its franchise agreement, or applicable state or federal law:

(1) Liquidated Damages. The Franchising Authority may impose liquidated damages in the following amounts. Payment of liquidated damages by the Grantee will not relieve the Grantee of its obligation to comply with the franchise agreement and Ordinance requirements.

(A) For failure to substantially complete system construction or line extensions as required, unless the Franchising Authority specifically approves a delay for good cause shown, Grantee shall pay up to One thousand Dollars ($1,000) per day for each day, or part thereof, the deficiency continues.

(B) For material failure to provide data, documents, reports or information in a timely manner as required, Grantee shall pay up to Two Hundred Dollars ($200) per day, or part thereof, that each violation occurs or continues.

(C) For failure to substantially comply with the material provisions of Sections relating to: Minimum Facilities and Services, access channels and Technical Standards of this Franchise , Grantee shall pay up to One thousand Dollars ($1,000) per day for each day, or part thereof, that the violation continues.

(D) For failure to comply with the provisions of Sections relating to: Assignment or Lease of Franchise, Grantee shall pay up to One Thousand Dollars ($1,000) per day for each day, or part thereof, that the violation continues.

(E) For failure to comply with any other material provision of any Franchising Authority Ordinance or of a franchise agreement within fifteen (15) calendar days of receipt of notice of such non-compliance, the Grantee

shall pay up to Six Hundred Dollars ($600) per day for each day, or part thereof, that such non-compliance continues.

(F) For failure to substantially comply with reasonable orders of the Franchising Authority pursuant to the terms of the franchise, Grantee shall pay up to Two Hundred Dollars ($200) per day for each day, or part thereof, that noncompliance continues.

(G) Before assessing liquidated damages against Grantee, the Franchising Authority shall give Grantee written notice of its intention to assess such damages. Following receipt of such notice, Grantee and the Franchising Authority shall have a thirty (30) calendar day period during which time Grantee and the Franchising Authority shall make good faith reasonable efforts to resolve the dispute in question. If the dispute is not resolved in that thirty (30) calendar day period, the Franchising Authority may collect liquidated damages owed, either through drawdown of the security fund as provided in any Franchising Authority Ordinance, or through any other means allowed by law.

(b) In determining which remedy or remedies are appropriate, the Franchising Authority shall take into consideration the nature of the breach, the person or persons bearing the impact of the breach, and such other matters as the Franchising Authority determines are appropriate.

(c) In addition to or instead of any other remedy, the Franchising Authority may seek legal or equitable relief from any court of competent jurisdiction.

(d) Failure of the Franchising Authority to enforce any requirements of a franchise agreement or any Franchising Authority Ordinance shall not constitute a waiver of the Franchising Authority's right to enforce that violation or subsequent violations of the same type or to seek appropriate enforcement remedies.

(e) Notwithstanding other provisions of any Franchising Authority Ordinance, the fees, penalties, and procedures for the assessment of liquidated damages for non-compliance with the Customer Service and Consumer Protection requirements shall be as set forth in Exhibit A hereto.

**14.5 Revocation.**

A. Prior to revocation or termination of the Franchise, the Franchising Authority shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of a pattern of noncompliance by the Grantee, including one or more instances of substantial noncompliance with a material provision of the Franchise. The notice shall set forth the exact nature of the noncompliance. The Grantee shall have sixty (60) calendar days from such notice to object in writing and to state its reasons for such objection and provide any explanation. If the Franchising Authority has not received a satisfactory response from Grantee, it may then seek to revoke the Franchise at a public hearing. The Grantee shall be given at least ten (10) calendar days prior written notice of such public hearing, specifying the time and place of such hearing and stating its intent to revoke the Franchise.

B. At the hearing, the Council shall give the Grantee an opportunity to state its position on the matter, present evidence and question witnesses, after which it shall determine whether or not the Franchise shall be revoked. The public hearing shall be on the record and a written transcript shall be made available to the Grantee within ten (10) calendar days. The decision of the Council shall be made in writing and shall be delivered to the Grantee. The Grantee may appeal such determination to an appropriate court.

C. The Board shall hear any persons interested therein, and shall reasonably determine whether or not any default, failure, refusal or neglect by the Grantee was with just cause.

**14.6 Conditions of Sale After Revocation or Termination.** At the termination or revocation of the Franchise, as provided herein, Grantee shall, upon notice by the Franchising Authority, cease all operations and upon request by Franchising Authority remove at its own expense the Cable System from all Streets within the Service Area. Notwithstanding the foregoing, the Grantee may abandon any property in place in the public rights-of-way or public property upon written notice to the Franchising Authority. In the event that Grantee, upon written notice to Franchising Authority, abandons any property in place in the public right-of-way or public property, then Franchising Authority shall have the option of 1) within ninety (90) calendar days of the receipt of such notice and if the Franchising Authority determines that the safety, appearance, or use of the public rights-of-way would be adversely affected, the property must be removed by the Grantee by a date reasonably specified by the Franchising Authority in light of the amount of work to be performed: or 2) Franchising Authority may assign ownership of any property in place in the public right-of-way or public property to any third party, including itself.

## SECTION 15
## Miscellaneous Provisions

**15.1 Compliance with State and Federal Laws.** This franchise shall be governed by and construed in accordance with Federal law, the laws of the State of Tennessee and the City of Clarksville. Grantee further acknowledges by acceptance of this Franchise Agreement that it has carefully read the terms and conditions of this Franchise Agreement and any applicable cable ordinance of City, as it exists upon the execution date of this franchise agreement, and accepts the obligations imposed thereby regardless of whether such obligations are contained in the Franchise Agreement or such cable ordinance, or both. As of the Effective Date, and without waiving any rights Grantee may have to challenge the lawfulness or enforceability of this Franchise Agreement or ordinances in the future, Grantee does not contend that any provisions of the Franchise Agreement is unlawful or unenforceable, nor is it aware of any ordinance which it contends is unlawful or unenforceable. Notwithstanding any other provisions of this Franchise to the contrary, the Grantee shall at all times comply with all laws and regulations of the State and federal government or any administrative agencies thereof which relate to the conduct of Grantee's business. In the event of a conflict between any ordinance and this Franchise Agreement, the provisions of Sec. 2.4 supra shall apply.

**15.2 Force Majeure.** The Grantee shall not be held in default under, or in noncompliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control. This provision includes work delays caused by waiting for utility providers to service or monitor their utility poles to which Grantee’s Cable System is attached, as well as unavailability of materials. Furthermore, the parties hereby agree that it is not the Franchising Authority’s intention to subject the Grantee to penalties, fine, forfeitures or revocation of the Franchise for

violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on the Subscribers within the Franchise territory, or where strict performance would result in practical difficulties and hardship to the Grantee which outweighs the benefit to be derived by the Franchising Authority and/or Subscribers.

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

**15.4 Notices.** Notices. Except as otherwise specified herein, all notices, consents, approvals, requests and other communications (herein collectively "Notices") required or permitted under this Franchise Agreement shall be given in writing and mailed by registered or certified first-class mail, return receipt requested addressed as follows:

If to City:
Mayor
City of Clarksville
One Public Square
Clarksville, Tennessee 37040

If to Grantee:
Brian Taylor, Superintendent
Clarksville Department of Electricity
2021 Wilma Rudolph Boulevard
Clarksville, Tennessee 37043

All notices shall be deemed given on the day of mailing. Either party to this Franchise Agreement may change its address for the receipt of Notices at any time by giving notice thereof to the other as provided in this Section. Any notice given by any party hereunder must be signed by an authorized representative of such party.

**15.5 Public Notice.** After the effective date of this Renewal of Franchise Agreement, minimum public notice of any public meeting relating to this Franchise shall be by publication at least once in a newspaper of general circulation in the area at least ten (10) days prior to the meeting, posting at the administrative buildings of the Franchising Authority and by announcement on at least one (1) channel of the Grantee's Cable System, if possible, for five (5) consecutive days prior to the meeting.

**15.6 Severability.** If any section, subsection, sentence, clause, phrase, or portion of this Franchise is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Franchise.

**15.7 Entire Agreement.** This Franchise sets forth the entire agreement between the parties respecting the subject matter hereof. All agreements, covenants, representations and warranties, express and implied, oral and written, of the parties with regard to the subject matter hereof are contained herein. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made by any party to another with respect to the matter of this Franchise. All prior and contemporaneous conversations, negotiations, possible and alleged agreements, representations, covenants and warranties with respect to the subject matter hereof are waived, merged herein and therein and superseded hereby and thereby.

**15.8 Effective Date.** This Renewal of Franchise Agreement shall be effective thirty (30) calendar days after approval of same by the City Council.

Accepted this _____ day of _____, 2014, subject to applicable federal, state and local law.

**Clarksville Electric Power Board, Chairman**

Signature:_____

Name :_____

~~**CDEL**~~ **CDE Lightband, Superintendent**

Signature:_____

Name:_____

**Exhibit A.**
**Customer Service Standards**

Section 76.309 FCC Customer Service Obligations

Cable system office hours and telephone availability. The cable operator will maintain a local, toll-free or collect call telephone access line which will be available to its subscribers 24 hours a day, seven days a week.

Trained company representatives will be available to respond to customer telephone inquires during normal business hours.

After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained company representative on the next business day.

Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less then ninety (90) percent of the time under normal operating conditions, measured on a quarterly basis.

The operator will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

Under normal operating conditions, the customer will receive a busy signal less than three (3) percent of the time.

Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located.

Installations, outages, and service calls. Under normal operating conditions, each of the following four standards will be met no less than ninety five (95) percent of the time measured on a quarterly basis:

Standard installations will be performed within seven (7) business days after an order has been placed. "Standard" installations are those that are located up to 125 feet from the existing distribution system.

Excluding conditions beyond the control of the operator, the cable operator will begin working on "service interruptions" promptly and in no event later than 24 hours after the interruption becomes known. The cable operator must begin actions to correct other service problems the next business day after notification of the service problem.

The "appointment window" alternative for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. (The operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.)

An operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

If a cable operator representative is running later for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

Communications between cable operators and cable subscribers.

Notifications to subscribers. The cable operator shall provide written information on each of the following areas at the time on installation of service, at least annually to all subscribers, and at any time upon request:

products and services offered:

prices and options for programming services and conditions of subscription to programming and other services;

installation and service maintenance policies;

instructions on how to use the cable service;

channel positions of programming carried on the system; and,

billing and complaint procedures, including the address and telephone number of the local franchise authority's cable office.

Customers will be notified of any changes in rates, programming services or channel positions as soon as possible through announcements on the cable system and in writing. Notice must be given to subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the cable operator. In addition, the cable operator shall notify subscribers thirty (30) days in advance of any significant changes in the other information required by the preceding paragraph.

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

In case of a billing dispute, the cable operator must respond to a written compliant from a subscriber within thirty (30) days.

Refunds. Refund checks will be issued promptly, no later than either:

the customer's next billing cycle following resolution of the request or thirty (30) days, whenever is earlier, or

the return of equipment supplied by the cable operator if service is terminated.

Credits. Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

**Definitions-**

Normal Business Hours. The terms "normal business hours" means those hours during which most similar businesses in the community are open to serve customers. In all cases, "normal business hours" must include some evening hours at least one night per week and/or some weekend hours.

Normal Operating Conditions. The term "normal operating conditions" means those service conditions which are within the control of the cable operator. Those conditions which are not within the control of the cable operator include, but are not limited, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the cable operator include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system.

Service Interruption. The term "service interruption" means the loss of picture or sound on one or more cable channels.

Liquidated Damages

(a) The Service Standards required in this Section shall be applicable to Franchisee's call service center.

(b) The liquidated damages applicable to Franchisee for non-compliance with one or more of the customer service standards and the service installation standards set forth in Exhibit A shall be as follows:

(i) If, after January 1, 2015, Franchisee fails in any calendar quarter to comply with any of the performance standards listed in Exhibit A, Franchisee shall incur liquidated damages in the amount of Eighteen Thousand and No/100 Dollars ($18,000.00). These liquidated damages shall be paid by Franchisee to the Franchising Authority within fifteen (15) calendar days after the end of every calendar quarter in which franchisee fails to meet the standards set forth in Exhibit A.

(ii) The amount of the liquidated damage payment shall increase every year by the percentage yearly increase in the Consumer Price Index. Such increases shall be effective on the annual anniversaries of the effective date of the franchise, commencing with the first anniversary.