

ORDINANCE #19-04

AN ORDINANCE GRANTING A FRANCHISE AND AUTHORIZING THE EXECUTION OF A FRANCHISE AGREEMENT BETWEEN COMCAST OF CALIFORNIA/MASSACHUSETTS/MICHIGAN/UTAH LLC AND COMCAST OF UTAH, II, INC. AND SANDY CITY.

WHEREAS, Comcast desires to continue providing cable services within Sandy City; and

WHEREAS, pursuant to Chapter 27 of Title 16 of the Revised Ordinances of Sandy City, Comcast desires to obtain a franchise and enter into a franchise agreement for the construction and operation of Comcast's cable system in the public way; and

WHEREAS, the City Council of Sandy City desires to grant to grant a franchise to Comcast and enter into a franchise agreement for the purpose of allowing Comcast to operate within the public way.

NOW, THEREFORE, BE IT ORDAINED by the City Council of Sandy City as follows:

Section 1. The City Council of Sandy City hereby approves the attached Cable Television Franchise Agreement between Sandy, Utah and Comcast of California/Massachusetts/Michigan/Utah, LLC and Comcast of Utah, II Inc., for the installation, operation and maintenance of a cable television system within the Sandy City boundaries for an initial term of ten years.

Section 2. Mayor Kurt Bradburn is hereby authorized to execute the agreement on behalf of Sandy City Corporation and to act in accordance with its terms.

Section 3. This ordinance shall become effective upon publication of a summary thereof and the City Recorder is hereby directed to publish such summary as soon as practically possible.

PASSED AND APPROVED by the Sandy City Council this \_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Kristin Coleman-Nicholl  
Sandy City Council

PRESENTED to the Mayor this \_\_\_\_ day of \_\_\_\_\_, 2019.

APPROVED by the Mayor this \_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Kurt Bradburn, Mayor

ATTEST:

\_\_\_\_\_  
City Recorder

RECORDED this \_\_\_\_ day of \_\_\_\_\_, 2019.

SUMMARY PUBLISHED this \_\_\_\_ day of \_\_\_\_\_, 2019.

**CABLE TELEVISION FRANCHISE AGREEMENT  
BETWEEN SANDY, UTAH  
AND COMCAST OF CALIFORNIA/MASSACHUSETTS/MICHIGAN  
UTAH, LLC AND COMCAST OF UTAH, II INC.**

**2019**

This Franchise Agreement (“Franchise”) is between Sandy City, Utah, hereinafter referred to as “the City” and both Comcast of California/ Massachusetts/ Michigan/ Utah, LLC. And Comcast of Utah II, Inc., collectively hereinafter referred to as “the Grantee.” The City and the Grantee are referred to together as “the Parties.”

The City hereby acknowledges that the Grantee has the financial, legal, and technical ability to provide services, facilities, and equipment necessary to meet the cable-related needs of the community, and having afforded the public adequate notice and opportunity for comment, desires to enter into this Franchise with the Grantee for the construction and operation of a Cable 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 abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number:

- A. “Affiliate” when used in relation to any person, means another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person.
- B. “Basic Cable” is the lowest priced tier of Cable Service that includes the retransmission of local broadcast television signals.
- C. “Cable Act” or “Act” means the Communications Act of 1934, including the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996.
- D. “Cable Services” shall have the meaning provided under Federal law and regulations.
- E. “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.

F. "City" means the city of Sandy, Utah, or the lawful successor, transferee, or assignee thereof.

G. "FCC" means Federal Communications Commission or successor governmental entity thereto.

H. "Grantee" means Comcast of California/Massachusetts/Michigan/Utah, LLC, and Comcast of Utah II, Inc. collectively or the lawful successors, transferees, or assignees thereof.

I. "Gross Revenue" means any and all revenue of any kind or nature received directly or indirectly by a Grantee, its affiliates, parent and any person, firm or corporation in which the Grantee has a financial interest or which has a financial interest in the Grantee, arising from or attributable to the Grantee's operation of its Cable System to provide Cable Services that requires the use of the City's Public Way, including, but not limited to:

- (i) Revenue from all charges for Cable Service provided to Subscribers;
- (ii) Revenue directly derived and attributable to the sale of commercial advertising upon the Cable System;
- (iii) Revenue from all charges for the leased use of studios;
- (iv) Revenue from all charges for the use of or lease of leased access channels;
- (v) Monthly recurring revenue from all charges for the installation, removal, connection and reinstatement of equipment necessary for a Subscriber to receive Cable Services; and
- (vi) Revenue from the sale, exchange, use or cablecast of any programming developed for community use or institutional Subscribers.

"*Gross Revenues*" shall not include taxes or fees (except the Franchise Fee) collected by Grantee on behalf of any governmental authority; any increase in the value of stock, security or asset; any surcharges for underground conversion of cable plant costs; any increase in the value of any stock, security or asset; the value of complimentary service provided to the Grantee's employees; and dividends or other distributions made in respect of any stock or securities; value received by the Grantee or any of its affiliates through cooperative advertising; or revenues which cannot be collected by Provider and are identified as bad debt (provided, however, that if revenue previously representing bad debt is collected, that revenue shall be included in Gross Revenue for the collection period).

J. "Maintenance" "maintaining" or "maintain" means, without limitation, repairing, replacing, relocating, examining, testing and inspecting.

K. "Person" means any person, firm, partnership, association, corporation, company or organization of any kind other than the City.

L. "Public Way" shall mean the surface of and the space above and below any public street, road, highway, freeway, alley or public utility easement now or hereafter dedicated to the public for the purpose of public use and regulated by the city.

M. "Service Area" means the present boundaries of the City, and shall include any additions thereto by annexation or other legal means.

N. "Standard Installation" is defined as 125 feet from the nearest tap to the Subscriber's terminal.

O. "Subscriber" means an authorized recipient lawfully receiving Cable Service provided by the Grantee by means of or in connection with the Cable System, whether or not a fee is paid for such service.

## **SECTION 2**

### **Grant of Franchise**

**2.1 Grant.** The City hereby grants to the Grantee a nonexclusive Franchise which authorizes the Grantee to construct and operate a Cable System in, along, upon, across, over and under Public Ways within the Service Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, over, under, upon, across, or along any Public Way such facilities and equipment as may be necessary or appurtenant to the Cable System, subject to the laws, regulations, standards, specifications and permits of the City, except where specifically prohibited by the City.

**2.2 Authority over Non-Cable Services.** To the extent allowed by law, the City shall retain the authority to regulate and receive compensation for Non-Cable Services. If the Grantee is allowed by law and chooses to provide Non-Cable Services, the Grantee and the City will negotiate the terms and fees in accordance with applicable law.

**2.3 Other Ordinances.** The Grantee agrees to comply with the terms of any lawfully adopted generally applicable local ordinance, to the extent that the provisions of the ordinance do not have the effect of limiting the benefits or expanding the obligations of the Grantee that are granted by this Franchise Agreement. Neither party may unilaterally alter the material rights nor obligations set forth in this Franchise Agreement. In the event of a conflict between any ordinance and this Franchise Agreement, the Franchise Agreement shall control, provided however that the Grantee agrees that it is subject to the lawful exercise of the police power of the City.

Each and every term, provision or condition herein is subject to the provisions of State law, federal law, and Franchise Authority ordinances and regulations enacted pursuant thereto. Notwithstanding

the foregoing, the Franchise Authority may not unilaterally alter the material rights and obligations of Grantee under this Franchise.

## **2.4 Competitive Equity**

### **(A) New Video Service Provider**

Notwithstanding any other provision in this Agreement, if any Video Service Provider (“VSP”) (i) enters into any agreement with the City to provide video services in the Service Area, or (ii) is otherwise approved and permitted to provide video services to Subscribers in the Service Area without entering into an agreement with the City, the City, upon written request of the Grantee, shall permit the Grantee to construct and operate its Cable System and to provide video services to subscribers in the Service Area under the same terms and conditions as are approved and permitted by the City and applied to the new VSP. The Grantee and the City shall enter into an agreement or other appropriate authorization (if necessary) containing the same terms and conditions as are applicable to the VSP within sixty (60) days after the Grantee submits a written request to the City.

### **(B) No Written Agreement between City and Third Party VSP**

If there is no written agreement or other authorization between the new VSP and the City, the City shall endeavor to require the new VSP to operate according to the terms and conditions under which Grantee is allowed to provide video services to subscribers within the Service Area.

### **(C) Effect of this Section on the Overall Agreement**

The Grantee, at its option, may terminate this Agreement upon written notice to the City, without penalty or damages, if City violates any provision of this section 2.4.

### **(D) VSP Defined**

The term “Video Service Provider” or “VSP” shall mean any entity using the Public Way to provide multiple video programming services to subscribers, regardless of the transmission method, facilities, or technology used. A VSP shall include but is not limited to any entity that provides cable services, multichannel multipoint distribution services.

**2.5 Term.** The Franchise granted hereunder shall be for an initial term of Ten (10) years commencing on the effective date of the Franchise as set forth in subsection 8.6, unless otherwise lawfully terminated in accordance with the terms of this Franchise. The Franchise may be renewed upon mutual agreement of the Parties.

### **SECTION 3**

#### **Standards of Service**

**3.1 Conditions of Occupancy.** The Cable System installed by the Grantee pursuant to the terms hereof shall be located so as to cause a minimum of interference with the use of Public Ways and with the rights and reasonable convenience of property owners who own property that adjoins any of such Public Ways. To the extent possible, Grantee will locate the Cable System within public utility easements. This Franchise does not grant to Grantee any rights to enter private property. Prior to performing installation, maintenance, repair, removal or other work within the public utility easements, Grantee will provide reasonable notice to the property owner containing, at a minimum: (a) company contact information; (b) date, time and duration of the work; (c) general description of location and type of work.

**3.2 Restoration of Public Ways.** If during the course of the Grantee's construction, operation, or maintenance of the Cable System there occurs a disturbance of any Public Way by the Grantee, Grantee shall replace and restore such Public Way in accordance with the laws, regulations, standards, specifications and permits of the City. Such restoration shall be at Grantee's expense. All replacement and restoration work in the Public Way shall be subject to the reasonable approval and acceptance of the City. Disturbed property that is not within the Public Way shall be restored to a condition reasonably comparable to the condition existing immediately prior to such disturbance.

**3.3 Relocation for the City.** Upon its receipt of reasonable advance written notice, to be not less than ten (10) business days, the Grantee shall at its own expense protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way, any property of the Grantee when lawfully required by the City by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, widening or realignment of street, installation, maintenance, repair or removal of sewers, drains, gas or water pipes, power lines or other municipal utility infrastructure, or any other type of public structures or improvements. Grantee shall not be required to pay for the relocation of Cable System facilities, and may require advance payment for costs and expense, to the extent such removal or relocation is requested solely for aesthetic purposes, provided that the original location of the Cable System facilities was approved by City through the permitting process.

In the event of an emergency, the City shall notify the Grantee, who shall immediately respond to the emergency. Should the Grantee be unable to respond in a timely manner, the City shall take such action as is necessary to meet the emergency at the expense of Grantee, if such action by the City would otherwise have been at Grantee's expense.

The Grantee shall in all cases have the right of abandonment of its property. If public funds are available to any person using such Public Way for the purpose of defraying the cost of any of the foregoing, then the City shall support application for such funds on behalf of the Grantee.

**3.4 Relocation for a Third Party.** The Grantee shall, on the request of any Person holding a lawful permit issued by the City, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way as necessary any property of the Grantee, provided that, unless the third party is constructing public infrastructure on behalf of the City: (A) the expense of such is paid by said Person benefiting from the relocation, including, if required by the Grantee, making such payment in advance; and (B) the Grantee is given reasonable advance written notice to prepare for such changes. For purposes of this subsection, “reasonable advance written notice” shall be no less than ten (10) business days in the event of a temporary relocation, and no less than one hundred twenty (120) days for a permanent relocation.

**3.5 Trimming of Trees and Shrubbery.**

(A) The Grantee or its contractor may prune all trees and vegetation which overhang the Public Ways, whether such trees or vegetation originate within or outside the Public Ways, to prevent the branches or limbs or other part of such trees or vegetation from interfering with the Cable System. Such pruning shall comply with the American National Standard for Tree Care Operation (ANSI A300) and Best Management Practices: Utility Pruning of Trees, as such standard may be updated from time to time, and be conducted under the direct supervision of an arborist with a nationally recognized arborist certification, on site, not less often than once every three years. For purpose of this section, pruning shall mean the regularly scheduled pruning cycles routinely performed by the Grantee. Pruning does not include clean-up activities that are necessary due to an emergency caused by fallen or broken trees or other vegetation. Under such a clean-up event, the Grantee shall not be required to have a certified arborist on-site. A growth inhibitor may be used for trees and vegetation species that are fast growing and problematic.

(B) The Grantee shall make a reasonable effort, including written notice, to notify owners of property adjacent to the trees to be trimmed at least 72 hours prior to doing the work. Additionally, the Grantee shall give at least 72 hours’ notice to the City before pruning trees within the Public Ways. The City agrees to coordinate with the Grantee concerning the types and species of trees planted within the Public Ways and the Grantee agrees to coordinate with the City concerning the timing and frequency of its tree trimming within the Public Ways. The Grantee shall promptly replace any trees, shrubs, or other property damaged by the Grantee or its officers, agents, or employees, including any trees which the Grantee removes forty percent or more of their branches, trunk, or roots, except where otherwise allowed by the City's Director of Public Works; or in the City's discretion, the Grantee shall promptly pay the City for the cost of replacing any such trees or shrubs. Any trees or shrubs replaced hereunder shall be of the same size and species as those which were lost or damaged where such replacements can reasonably be found or at the City's discretion, with other size or species approved by the City's Director of Public Works. Trees pruned in compliance with ANSI A300 or the ISA utility pruning best management practice referenced in 3.5(A) of this Agreement, shall not be construed as having been damaged.

(C) The Grantee shall indemnify, defend, and hold harmless the City and its officers, agents and employees from and against any and all damages arising out of or resulting from the pruning or



removal of or any injury to any tree or trees proximately caused by the Grantee or its officers, agents, employees, contractors or subcontractors.

**3.6 Safety Requirements.** Construction, operation, and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with generally applicable federal, state, and local regulations and the National Electric Safety Code. The Cable System shall not endanger or unreasonably interfere with the safety of Persons or property.

**3.7 Aerial and Underground Construction.** Prior to construction, in each case, all applicable permits shall be applied for and granted at City's discretion and all fees shall be paid.

In those areas of the Service Area where all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are underground, the Grantee likewise shall construct, operate, and maintain its Cable System underground.

In any region(s) of the Service Area where the transmission or distribution facilities of the respective public or municipal utilities are both aerial and underground, the Grantee shall have the discretion to construct, operate, and maintain all of its transmission and distribution facilities, or any part thereof, aerially or underground. Nothing contained in this Section shall require the Grantee to construct, operate, and maintain underground any ground-mounted appurtenances such as customer taps, line extenders, system passive devices, amplifiers, power supplies, pedestals or other related equipment..

All "drop" cable lines running from feeder cable to individual property shall be placed underground at least twelve (12) inches below ground level.

**3.8 Access to Open Trenches.** The City agrees to require Grantee's signature on new plats for new subdivisions.

**3.9 Required Extensions of the Cable System.** Nothing in this Agreement requires Grantee to build to all areas of the Service Area. Grantee retains the discretion to determine the scope, location, and timing of the design and construction of its network, as well as the windows during which residential Subscribers may enroll for services, so long as such decisions are consistent with this Section. Grantee, at its sole discretion, may determine separately defined geographic areas within the Service Area where the Cable System will be deployed, services will be offered, or facilities will be upgraded.

**3.10 Subscriber Charges for Extensions of the Cable System.** No Subscriber shall be refused service arbitrarily. However, all requested extensions are subject to Section 3.9 herein and may include a requirement that the Subscriber(s) share the capital costs of extending the Cable system. In the event that Grantee decides to build out the Cable System to an area that is currently unserved, the Grantee may require that potential Subscribers pay their capital contribution in aid of construction prior to constructing the extension.

Subscribers shall also be responsible for any non - Standard Installation charges to extend the Cable System from the tap to the residence.

**3.11 Cable Service to Public Buildings.** City acknowledges that complimentary services reflect a voluntary initiative on the part of Grantee. Grantee does not waive any rights it may have regarding complimentary services under federal law or regulation. Subject to applicable law, should Grantee elect to offset governmental complimentary services against franchise fees, Grantee shall first provide City with ninety (90) days' prior written notice. Such offset, should it be implemented shall be detailed in writing to the City. The Grantee, upon request, shall provide without charge, a Standard Installation and one outlet of Basic Cable to those administrative buildings owned and occupied by the City, fire station(s), sheriff sub-station(s), and K-12 public school(s) that are passed by its Cable System. The Cable Service provided shall not be distributed to other buildings beyond the originally installed outlet without authorization from the Grantee. The Cable Service provided shall not be used for commercial purposes, and such outlets shall not be located in areas open to members of the general public. The City shall take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in any loss or damage to the Cable System. The City shall hold the Grantee harmless from any and all liability or claims arising out of the provision and use of Cable Service required by this subsection. The Grantee shall not be required to provide an outlet to such buildings where a non-Standard Installation is required, unless the City or building owner/occupant agrees to pay the incremental cost of any necessary Cable System extension and/or non-Standard Installation. If additional outlets of Basic Cable are provided to such buildings, the building owner/occupant shall pay the usual installation and service fees associated therewith.

**3.12 Technical Standards.** The Grantee is responsible for insuring that the Cable System is designed, installed and operated in a manner that fully complies with FCC rules in Subpart K of Part 76 of Chapter I of Title 47 of the Code of Federal Regulations (47 CFR Part 76 §76.601-76.640) as revised or amended from time to time. As provided in these rules, the City shall have, upon request, the right to obtain a copy of tests and records required in accordance with appropriate rules but has no authority, pursuant to federal law, to enforce compliance with such standards.

**3.13 Emergency Use.** Grantee shall provide an operating Emergency Alert System ("EAS") throughout the term of this Franchise in compliance with FCC standards. Grantee shall test the EAS as required by the FCC. Upon request, the City shall be permitted to participate in and/or witness the EAS testing up to twice a year on a schedule formed in consultation with Grantee. If the test indicates that the EAS is not performing properly, Grantee shall make any necessary adjustment to the EAS, and the EAS shall be retested.

**3.14 Reimbursement of Costs.** If funds are available from the City to any Person using the Public Way for the purpose of defraying the cost of any of the foregoing, the City shall make funds similarly available to 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 City shall: (a) support Grantee's application for such funds; or (b) make application for such funds on

behalf of the Grantee, if application by the City is required by the other governmental entity and Grantee provides all necessary information within Grantee's control.

**3.15 Customer Service Standards.** The Grantee shall comply at all times and in all respects with the customer service provisions set forth in 47 Code of Federal Regulations Parts 76.309, 76.1602 and 76.1603 and successor provisions.

**3.16 Fees and Charges to Customers** All rates, fees, charges, deposits and associated terms and conditions to be imposed by the Grantee or any Affiliate for any Cable Service as of the Effective Date shall be in accordance with applicable FCC's rate regulations. Before any new or modified rate, fee, or charge is imposed, the Grantee shall follow the applicable FCC notice requirements and rules and notify affected Subscribers, which notice may be by any means permitted under applicable law.

**3.17 Customer Bills and Privacy** Customer bills shall be designed in such a way as to present the information contained therein clearly and comprehensibly to Customers, and in a way that (A) is not misleading and (B) does not omit material information. Notwithstanding anything to the contrary in Section 3.15 above, the Grantee may, in its sole discretion, consolidate costs on Customer bills as may otherwise be permitted by Section 622(C) of the Cable Act (47 U.S.C. 542(c)). The Grantee shall also comply with all applicable federal and state privacy laws, including Section 631 of the Cable Act and regulations adopted pursuant thereto.

**3.18 Government and Education Access Channel.** The parties acknowledge that the City has chosen to suspend current operation of its Government and Education Access Channel and has returned Grantee's transmission equipment associated with the Government and Education Access Channel as of the date of this Agreement. However, upon one hundred twenty (120) days of the City's written request, the Grantee shall make available one (1) channel to be used for educational and governmental cablecast programming. When first-run programming on the first educational and governmental access channel occupies fifty percent of the hours between 11:00 a.m. and 11 p.m., for any twelve consecutive weeks, the City may request the use of one additional channel for the same purpose. The additional channel must maintain programming twenty-five percent of the hours between 11:00 a.m. and 11:00 p.m. for twelve consecutive weeks. If this level of programming is not maintained, the additional channel will return to the Grantee for its use. The Grantee also reserves the right to program the designated educational and governmental channels during the hours not used by the City or other governmental entities. If programming time is not used by City and is available for sharing, the channels may be shared with other municipalities receiving programming from the common head end receive site location. In the event the City requests new or additional lines and/or facilities or upgrades to current facilities from Grantee under this section, it shall do so at City's own cost. The City shall agree to indemnify, save and hold harmless the Grantee from and against any liability resulting from the use of the aforementioned educational and governmental channels by the City, except for liability resulting from program time shared with other municipalities.

### **3.19 Return Lines/Access Origination.**

(A) Once the City decides to engage Grantee in EG Access Channel service under Section 3.18 above, then Grantee shall at that time maintain the return lines from all existing access broadcast facilities to the headend in order to enable the distribution of programming to Subscribers on the Government and Education Access Channels. Grantee shall continuously maintain these return lines throughout the term of the Agreement, unless any of these locations are no longer used in the future to originate Government and Education Access programming.

(B) Within eighteen (18) months of a written request by the City, Grantee shall construct additional return lines to other locations in the Franchise Area and shall perform all maintenance, service and repair of such return lines; provided however, that Grantee's construction costs shall be paid by the City or its designated access provider.

(C) Return lines shall be maintained by Grantee in the same manner as the rest of the Cable System so that Access Channels may be viewed at the same quality that is provided by the City or its Designated Access Provider.

**3.20 System Capacity.** During the term of this Agreement the Grantee's Cable System shall be capable of providing a minimum of 200 channels of video programming with satisfactory reception available to Subscribers in the Service Area.

**3.21 Reporting.** On an annual basis upon prior written request from the City, Grantee shall provide the City with a report of its operations of the Cable System in the Service Area, including the number of Subscribers, the anticipated construction and maintenance of its facilities and its general plans to increase availability in the following year. Grantee shall not be required to disclose any protected or confidential information as part of this annual report. Grantee is not required to provide any report unless requested by the City. Grantee also agrees to meet with the City on an annual basis upon fifteen (15) days prior written request from the City. Matters to be discussed include, but are not limited to customer service, system performance, technical issues and other matters related to Grantee's operation of the Cable System.

## **SECTION 4**

### **Regulation by the City**

#### **4.1 Franchise Fee.**

A. The Grantee shall pay to the City a franchise fee of five percent (5 %) of annual Gross Revenue (as defined in subsection 1.1 of this Franchise). In accordance with the Cable Act, the twelve (12) month period applicable under the Franchise for the computation of the

franchise fee shall be a calendar year. Grantee shall not be compelled to pay any higher percentage of franchise fees than any other video service provider providing service in the Service Area. The franchise fee payment shall be due quarterly and payable within forty-five (45) days after the close of the preceding calendar quarter. Each payment shall be accompanied by a brief report prepared by a representative of the Grantee showing the basis for the computation.

B. **Limitation on Franchise Fee Actions.** The period of limitation for recovery of any franchise fee payable hereunder shall be three (3) years from the date on which payment by the Grantee is due.

C. The City agrees that all amounts paid by the Grantee as Franchise Fees may be passed through to customers and identified as a separate line item on the bill in accordance with 47 U.S.C 542 added to the price of Cable Services and collected from the Grantee's customers as "external costs" as such term is used in 47 C.F.R. 76.922. In addition, all amounts paid as Franchise Fees may be separately stated on customers' bills as permitted in 47 C.F.R. 76.985.

D. In the event that Grantee is required to pay a franchise renewal and/or application fee pursuant to any Franchise Authority local ordinance, the franchise renewal and/or application fee shall be offset against any franchise fees due and payable to City on the first quarterly payment after execution of this Agreement.

**4.2 Rates and Charges.** The City may regulate rates for the provision of Basic Cable and equipment as expressly permitted by federal or state law.

**4.3 Renewal of Franchise.**

A. The City and the Grantee agree that any proceedings undertaken by the City that relate to the renewal of the Grantee's Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act.

B. In addition to the procedures set forth in said Section 626(a), the City 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 City further agrees that 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.

C. Notwithstanding anything to the contrary set forth in this subsection 4.3, the Grantee and the City agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment, the City and the Grantee may agree to undertake and finalize informal negotiations regarding renewal of the then current Franchise and the City may grant a renewal thereof.

D. The Grantee and the City consider the terms set forth in this subsection 4.3 to be consistent with the express provisions of Section 626 of the Cable Act.

**4.4 Conditions of Sale.** If a renewal or extension of the Grantee's Franchise is denied or the Franchise is lawfully terminated, and the City either lawfully acquires ownership of the Cable System or by its actions lawfully effects a transfer of ownership of the Cable System to another party, any such acquisition or transfer shall be at the price determined pursuant to the provisions set forth in Section 627 of the Cable Act.

The Grantee and the City agree that in the case of a final determination of a lawful revocation of the Franchise, the Grantee shall be given at least twelve (12) months to effectuate a transfer of its Cable System to a qualified third party. Furthermore, the Grantee shall be authorized to continue to operate pursuant to the terms of its prior Franchise during this period. If, at the end of that time, the Grantee is unsuccessful in procuring a qualified transferee or assignee of its Cable System which is reasonably acceptable to the City, the Grantee and the City may avail themselves of any rights they may have pursuant to federal or state law. It is further agreed that the Grantee's continued operation of the Cable System during the twelve (12) month period shall not be deemed to be a waiver, nor an extinguishment of, any rights of either the City or the Grantee.

**4.5 Transfer of Franchise.** The Grantee's right, title, or interest in the Franchise shall not be sold, transferred, assigned, or otherwise encumbered, other than to an entity controlling, controlled by, or under common control with the Grantee, without the prior written consent of the City, such consent not to be unreasonably withheld. In the event of Transfer and as part of the consent process, Grantee shall apply for transfer and follow the steps outlined in Sandy City Code 16-27-4. 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 in order to secure indebtedness. Within thirty (30) days of receiving a request for transfer, the City 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 City has not taken action on the Grantee's request for transfer within one hundred twenty (120) days after receiving such request, consent by the City shall be deemed given.

## **SECTION 5**

### **Oversight and Regulation by Franchise Authority**

**5.1 Books and Records.** The Grantee agrees that the City, upon thirty (30) days written notice to the Grantee, may review such of its books and records at the Grantee's business office, during normal business hours and on a nondisruptive basis, as is reasonably necessary to ensure compliance with the terms of this Franchise. Such notice shall specifically reference the Section of the Franchise which is under review, so that the Grantee may organize the necessary books and records for easy access by the City. Alternatively, if the books and records are not easily accessible at the local office of the Grantee, the Grantee may, at its sole option, choose to pay the reasonable travel costs of

the City's representative to view the books and records at the appropriate location. The Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years. Notwithstanding anything to the contrary set forth herein, the Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature, nor disclose books and records of any affiliate which is not providing Cable Service in the Service Area. The City agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof. The Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act.

## **5.2 Franchise Fees Subject to Audit.**

**5.2.1.** Upon reasonable prior written notice, during normal business hours at Grantee's principal business office, the City shall have the right to inspect the Grantee's financial records used to calculate the City's franchise fees; provided, however, that any such inspection shall take place within two (2) years from the date the City receives such payment, after which period any such payment shall be considered final.

**5.2.2.** Upon the completion of any such audit by the City, the City shall provide to the Grantee a final report setting forth the City's findings in detail, including any and all substantiating documentation. In the event of an alleged underpayment, the Grantee shall have thirty (30) days from the receipt of the report to provide the City with a written response agreeing to or refuting the results of the audit, including any substantiating documentation. Based on these reports and responses, the parties shall agree upon a "Finally Settled Amount." For purposes of this Section, the term "Finally Settled Amount(s)" shall mean the agreed upon underpayment, if any, to the City by the Grantee as a result of any such audit. If the parties cannot agree on a "Final Settlement Amount," the parties shall submit the dispute to a mutually agreed upon arbitrator within sixty (60) days of reaching an impasse. In the event an agreement is not reached at arbitration or if either party is not satisfied with the outcome, either party may bring an action to have the disputed amount determined by a court of law.

**5.2.3.** Any "Finally Settled Amount(s)" due to the City as a result of such audit shall be paid to the City by the Grantee within thirty (30) days from the date the parties agree upon the "Finally Settled Amount." Once the parties agree upon a Finally Settled Amount and such amount is paid by the Grantee, the City shall have no further rights to audit or challenge the payment for that period. The City shall bear the expense of its audit of the Grantee's books and records.

## **SECTION 6**

### **Insurance and Indemnification**

**6.1 Insurance Requirements.** The Grantee shall maintain in full force and effect, at its own cost and expense, during the term of the Franchise, Commercial General Liability Insurance and Automobile Insurance in the amount of two million dollars (\$2,000,000) combined single limit for bodily injury and property damage. The City shall be designated as an additional insured. Such insurance shall be noncancellable except upon thirty (30) days prior written notice to the City. Upon written request, the Grantee shall provide a Certificate of Insurance showing evidence of the coverage required by this subsection. Grantee shall also maintain Workers' Compensation insurance coverage in compliance with Utah law.

**6.2 Indemnification.** The Grantee agrees to indemnify, save and hold harmless, and defend the City, its officers, officials boards and employees, from and against any liability for damages and for any liability or claims resulting from property damage or bodily injury (including accidental death), which arise out of the Grantee's construction, operation, or maintenance of its Cable System, provided that the City shall give the Grantee written notice of its obligation to indemnify the City within thirty (30) days of receipt of a claim or action pursuant to this subsection. Notwithstanding the foregoing, the Grantee shall not indemnify the City for any damages, liability or claims resulting from the willful misconduct or negligence of the City.

## **SECTION 7**

### **Enforcement and Termination of Franchise**

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

**7.2 The Grantee's Right to Cure or Respond.** The Grantee shall have thirty (30) days from receipt of the notice described in subsection 7.1: (A) to respond to the City, contesting the assertion of noncompliance, or (B) to cure such default, or (C) in the event that, 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 City of the steps being taken and the projected date that they will be completed.

**7.3 Public Hearing.** In the event that the Grantee fails to respond to the notice described in subsection 7.1 pursuant to the procedures set forth in subsection 7.2, or in the event that the alleged default is not remedied within thirty (30) days or the date projected pursuant to 7.2 (C) above, if it intends to continue its investigation into the default, then the City shall schedule a public hearing.



The City shall provide the Grantee at least ten (10) days prior written notice of such hearing, which specifies the time, place and purpose of such hearing, and provide the Grantee the opportunity to be heard.

**7.4 Enforcement.** Subject to applicable federal and state law, in the event the City, after the hearing set forth in subsection 7.3, determines that the Grantee is in default of any provision of the Franchise, the City may:

- A. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or
- B. Commence an action at law for monetary damages or seek other equitable relief; or
- C. In the case of a substantial default of a material provision of the Franchise, seek to revoke the Franchise in accordance with subsection 7.5.

**7.5 Revocation.** Should the City seek to revoke the Franchise after following the procedures set forth in subsections 7.1-7.4 above, the City shall give written notice to the Grantee of its intent. The notice shall set forth the exact nature of the noncompliance. The Grantee shall have ninety (90) days from such notice to object in writing and to state its reasons for such objection. In the event the City has not received a satisfactory response from the Grantee, it may then seek termination of the Franchise at a public hearing. The City shall cause to be served upon the Grantee, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise.

At the designated hearing, the City shall give the Grantee an opportunity to state its position on the matter, after which it shall determine whether or not the Franchise shall be revoked. The Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the City *de novo*. Such appeal to the appropriate court must be taken within sixty (60) days of the issuance of the determination of the City.

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

**7.6 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 the Grantee's Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

Furthermore, the parties hereby agree that it is not the City's intention to subject the Grantee to penalties, fines, 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 Service Area, or where strict performance would result in practical difficulties and hardship to the Grantee which outweigh the benefit to be derived by the City and/or Subscribers.

## **SECTION 8**

### **Miscellaneous Provisions**

**8.1 Actions of Parties.** In any action by the City 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.

**8.2 Entire Agreement.** This Franchise constitutes the entire agreement between the Grantee and the City. Amendments to this Franchise shall be mutually agreed to in writing by the parties.

**8.3 Notice.** Unless expressly otherwise agreed between the parties, every notice or response required by this Franchise to be served upon the City or the Grantee shall be in writing, and shall be deemed to have been duly given to the required party when placed in a properly sealed and correctly addressed envelope: a) upon receipt when hand delivered with receipt/acknowledgment, b) upon receipt when sent certified, registered mail, or c) within five (5) business days after having been posted in the regular mail.

The notices or responses to the City shall be addressed as follows:

Sandy  
Attn: Sandy City Attorney

The notices or responses to the Grantee shall be addressed as follows:

Comcast Cable Communications  
Attn: Government Affairs Manager  
9602 South 300 West  
Sandy UT 84070

with a copy to:

Comcast Corporation  
Legal Department  
1701 John F Kennedy Blvd.  
Philadelphia PA 19103

The City and the Grantee may designate such other address or addresses from time to time by giving notice to the other in the manner provided for in this subsection.

**8.4 Descriptive Headings.** The captions to Sections and subsections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.

**8.5 Severability.** If any Section, subsection, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other Section, subsection, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise.

**8.6 Effective Date.** The effective date of this Franchise is the 19<sup>th</sup> day of February 2019 pursuant to the provisions of applicable law. This Franchise shall expire on the 19<sup>th</sup> day of February 2029 unless extended by the mutual agreement of the parties.

Considered and approved this \_\_\_\_\_ day of February 2019.

Sandy

\_\_\_\_\_  
Kurt Bradburn  
Mayor

ATTEST:

\_\_\_\_\_  
Wendy Downs  
City Recorder

Accepted this \_\_\_\_ day of \_\_\_\_\_, 2019, subject to applicable federal, state and local law.

Comcast of California/Massachusetts/Michigan/Utah LLC.  
and Comcast of Utah, II Inc.

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_