

**DRAPER CITY RESOLUTION NO. 16-12**

**A RESOLUTION OF THE DRAPER CITY COUNCIL AUTHORIZING  
THE EXECUTION BY THE MAYOR OF A CABLE TELEVISION FRANCHISE  
AGREEMENT BETWEEN DRAPER CITY AND COMCAST OF UTAH II, INC.**

**WHEREAS**, Draper City Municipal Code Section 5-13-010 permits the City Council to grant a cable television franchise to a vendor to utilize the public rights-of-way and provide cable TV services within the confines and boundaries of Draper City; and

**WHEREAS**, the City Council has reviewed and considered the attached Franchise Agreement between Draper City and Comcast of Utah II, Inc.; and

**WHEREAS**, the City Attorney has reviewed the Franchise Agreement and has approved it as to form and compliance with federal law and regulations governing the awarding of cable television franchises; and

**WHEREAS**, the City Council has determined the Franchise Agreement to be in the best interest of the City and will be beneficial to the health, safety and welfare of citizens of the City; and

**WHEREAS**, the Mayor is authorized to execute agreements.

**NOW, THEREFORE, BE IT RESOLVED** by the Draper City Council as follows:

**Section 1. Resolution.** The Franchise Agreement between Comcast of Utah II, Inc. and Draper City to provide cable television services, attached hereto as Exhibit A and by this reference made a part hereof, is hereby approved and authorized for signing by the mayor on behalf of Draper City.

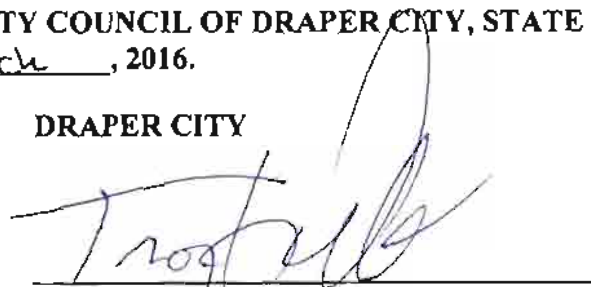
**Section 2. Effective Date.** This Resolution shall become effective immediately upon passage.

**PASSED AND ADOPTED BY THE CITY COUNCIL OF DRAPER CITY, STATE OF UTAH, THIS 1<sup>st</sup> DAY OF March, 2016.**

ATTEST:

DRAPER CITY

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

  
\_\_\_\_\_  
Mayor



**EXHIBIT A**

**CABLE TELEVISION FRANCHISE AGREEMENT  
BETWEEN DRAPER CITY, UTAH AND COMCAST OF UTAH II, INC.**

This Franchise Agreement (“Franchise”) is between Draper City, Utah, hereinafter referred to as “the Franchising Authority” and Comcast of Utah II, Inc. hereinafter referred to as “the Grantee.” The Franchising Authority and the Grantee are referred to together as “the Parties.”

The Franchising Authority 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” means Title VI of the Communications Act of 1934, as amended.

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

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. “FCC” means Federal Communications Commission or successor governmental entity thereto.

G. “Franchising Authority” means Draper City, Utah, or the lawful successor, transferee, or assignee thereof.

H. "Grantee" means Comcast of Utah II, Inc. or the lawful successor, transferee, or assignee thereof.

I. "Gross Revenue" means any and all revenue in whatever form, from any source, directly received by the Grantee or Affiliate of the Grantee, according to generally accepted accounting principles consistently applied, that would constitute a Cable Operator of the Cable System under the Cable Act, derived from the operation of the Cable System to provide Cable Services in any manner that requires use of the Public Ways in the Service Area. Gross Revenues include, but are not limited to, basic, expanded basic, and pay service revenues, revenues from installation, rental of converters, the applicable percentage of the sale of local and regional advertising time, and any leased access revenues.

Gross Revenues do not include (i) revenue from sources excluded by law; (ii) revenue derived by Grantee from services provided to its Affiliates; (iii) late payment fees; (iv) charges other than those described above that are aggregated or bundled with amounts billed to Cable Service Subscribers such as charges for Broadband or Telephone services; (v) fees or taxes which are imposed directly on any Subscriber by any governmental unit or agency, and which are collected by the Grantee on behalf of a governmental unit or agency including the FCC User Fee; (vi) revenue which cannot be collected by the Grantee and are identified as bad debt, provided, that if revenue previously representing bad debt is collected, this revenue shall then at time of collection be included in Gross Revenues for the collection period; (vii) refundable deposits, investment income, programming launch support payments, or advertising sales commissions; and (viii) Internet services.

J. "Person" means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity but not the Franchising Authority.

K. "Public Way" shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Franchising Authority in the Service Area which shall entitle the Franchising Authority and the Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System. Public Way shall also mean any easement now or hereafter held by the Franchising Authority within the Service Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the Franchising Authority and the Grantee to the use thereof for the purposes of installing and operating the Grantee's Cable System over wires, cables, conductors, ducts, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Cable System

L. "Service Area" means the present boundaries of the Franchising Authority, and shall include any additions thereto by annexation or other legal means, subject to the exceptions in subsection 3.9.

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

N. "Subscriber" means a Person who lawfully receives Cable Service of the Cable System with the Grantee's express permission.

## SECTION 2

### Grant of Franchise

**2.1 Grant.** The Franchising Authority hereby grants to the Grantee a nonexclusive Franchise which authorizes the Grantee to construct and operate a Cable System in, along, among, upon, across, above, over, under, or in any manner connected with Public Ways within the Service Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Public Way such facilities and equipment as may be necessary or appurtenant to the Cable System.

**2.2 Authority over Non-Cable Services.** To the extent allowed by law, the Franchising Authority 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 Franchising Authority 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. Neither party may unilaterally alter the material rights and obligations set forth in this Franchise. In the event of a conflict between any ordinance and this Franchise, the Franchise shall control, provided however that the Grantee agrees that it is subject to the lawful exercise of the police power of the Franchising Authority.

Each and every term, provision or condition herein is subject to the provisions of State law, federal law, and Draper city ordinances and regulations enacted pursuant thereto. Notwithstanding the foregoing, the Franchising Authority may not unilaterally alter the material rights and obligations of Grantee under this Franchise.

### **2.4 Competitive Equity**

#### **(A) Overview.**

The Grantee and the Franchising Authority acknowledge that there is increasing competition in the video marketplace among cable operators, direct broadcast satellite providers, telephone companies, broadband content providers and others; new technologies are emerging that enable the provision of new and advanced services to residents of the

Franchising Authority; and changes in the scope and application of the traditional regulatory framework governing the provision of video services are being considered in a variety of federal, state and local venues. To foster an environment where video service providers using the public rights-of-way can compete on a competitively neutral and nondiscriminatory basis; encourage the provision of new and advanced services to the residents; promote local communications infrastructure investments and economic opportunities in the Franchising Authority; and provide flexibility in the event of subsequent changes in the law, the Grantee and the Franchising Authority have agreed to the provisions in this Section, and they should be interpreted and applied with such purposes in mind.

**(B) New Video Service Provider**

Notwithstanding any other provision in this Agreement or any other provision of law, if any Video Service Provider (“VSP”) (i) enters into any agreement with the Franchising Authority to provide video services to subscribers in the Service Area, or (ii) otherwise begins to provide video services to subscribers in the Franchising Authority (with or without entering into an agreement with the Franchising Authority), the Franchising Authority, 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 agreement and/or under the same terms and conditions as apply to the new VSP. The Grantee and the Franchising Authority 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 Franchising Authority.

**(C) No Written Agreement between Franchising Authority and Third Party VSP**

If there is no written agreement or other authorization between the new VSP and the Franchising Authority, the Grantee and the Franchising Authority shall use the sixty (60) day period to develop and enter into an agreement or other appropriate authorization (if necessary) that to the maximum extent possible contains provisions that will ensure competitive equity between the Grantee and other VSP’s, taking into account the terms and conditions under which other VSP’s are allowed to provide video services to subscribers within the Service Area.

**(D) Effect of this Section on the Overall Agreement**

Any agreement, authorization, right or determination to provide video services to subscribers in the Franchising Authority under any provision under this Section 2.3 shall supersede this Agreement, and the Grantee, at its option, may terminate this Agreement or portions thereof, upon written notice to the Franchising Authority, without penalty or damages.

**(E) VSP Defined**

The term “Video Service Provider” or “VSP” shall mean any entity using the public rights-of-way to provide multiple video programming services to subscribers, for purchase at no

cost, 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, broadcast satellite services, satellite-delivered services, wireless services, and Internet Protocol based services.

**2.5 Term.** The Franchise granted hereunder shall be for an initial term of Ten (10) 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.

### **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 proper use of Public Ways and with the rights and reasonable convenience of property owners who own property that adjoins any of such Public Ways.

**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 at Grantee's expense to a condition reasonably comparable to the condition of the Public Way existing immediately prior to such disturbance.

**3.3 Relocation for the Franchising Authority.** 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 Franchising Authority by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, power lines or other municipal utility infrastructure, or any other type of public structures or improvements which are not used to compete with the Grantee's services. The Grantee shall in all cases have the right of abandonment of its property

In the event of an emergency, the Franchising Authority shall notify the Grantee, who shall immediately respond to the emergency. Should the Grantee be unable to respond in a timely manner, the Franchising Authority shall take such action as is necessary to respond to the emergency. If public funds are available to any person using such street, easement, or right-of-way for the purpose of defraying the cost of any of the foregoing under this Section 3.3, then the Franchising Authority shall make application for such funds on behalf of the Grantee.

Grantee shall not be required to pay for the relocation of Cable System facilities, and may require advance payment for costs and expenses to the extent such removal is requested solely for aesthetic purposes in cases where the original location of the facilities was approved by the Franchising Authority through the permitting process.

**3.4 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 Public Way as necessary any property of the Grantee, provided: (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.** The Grantee, upon consultation with the Franchising Authority, shall have the authority to trim trees or other natural growth in the public way in order to access and maintain the Cable System. In the exercise of such right, the Grantee shall not cut or otherwise injure any trees to any greater extent than is reasonably necessary. Nevertheless, nothing in this paragraph 3.5 shall authorize the Grantee to trim trees or other natural growth not located in the public way without the prior written consent of the owner of such trees or other natural growth.

**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 in the Service Area.

**3.7 Aerial and Underground Construction.** Subject to Section 2.3 above, Grantee shall comply with the requirements of Draper City Municipal Code pertaining to the installation of utilities. Prior to construction, in each case, all applicable permits shall be applied for and granted 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 provided that such underground locations are actually capable of accommodating the Grantee's cable and other equipment without technical degradation of the Cable System's signal quality.

In any region(s) of the Franchise 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



**3.8 Access to Open Trenches.** The Franchising Authority agrees to include the Grantee in the platting process for any new subdivision. At a minimum, the Franchising Authority agrees to require as a condition of issuing a permit for open trenching to any utility or developer that the utility or developer give the Grantee at least ten (10) days advance written notice of the availability of the open trench. Grantee shall negotiate with developer for payment of reasonable costs for such access.

**3.9 General Service Build Out.** Nothing in this Agreement requires Grantee to build to all areas of the Franchise Authority. 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 done on a non-discriminatory basis. Grantee, at its sole discretion, may determine separately defined geographic areas within the Franchise Area where its System will be deployed, services will be offered, or facilities will be upgraded. Franchise Authority may provide information to Grantee on build-out and suggest potential areas where availability of services could be improved or made available. Grantee will evaluate such suggestions in good faith, subject to economic viability and Grantee's discretion on implementation. Grantee agrees to continue to engage in positive community efforts towards "digital inclusion" for those residents within the Franchising Authority's boundaries who may not traditionally have access to Grantee's services, with a particular emphasis on the expansion of access to Grantee's services.

**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 payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance. 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.** Franchising Authority 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 Franchising Authority with ninety (90) days' prior notice. 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 Franchising Authority, 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 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 the public. The Franchising Authority 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 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 this subsection. The Grantee

shall not be required to provide an outlet to such buildings where a non-Standard Installation is required, unless the Franchising Authority 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 1 of Title 47 of the Code of Federal Regulations as revised or amended from time to time. As provided in these rules, the Franchising Authority 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.**

A. In accordance with and at the time required by the provisions of FCC Regulations Part 11, Subpart D, Section 11.51, and as other provisions which may from time to time be amended, the Grantee shall install, if it has not already done so, and maintain an Emergency Alert System (EAS) for use in transmitting Emergency Act Notifications (EAN) and Emergency Act Terminations (EAT) in local and state-wide situations as may be designated to be an emergency by the Local Primary (LP), the State Primary (SP) and/or the State Emergency Operations Center (SEOC), as those authorities are identified and defined within FCC Regulations, Section 11.18.

B. The Franchising Authority shall permit only appropriately trained and authorized persons to operate the EAS equipment and take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in inappropriate use, or any loss or damage to the Cable System. Except to the extent expressly prohibited by law, the Franchising Authority agrees to hold the Grantee, its employees, officers and assigns harmless from any claims arising out of the emergency use of its facilities by the Franchising Authority, including, but not limited to, reasonable attorneys' fees and costs.

**3.14 Reimbursement of Costs.** If funds are available to any Person using the Public Way 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.

**3.15 Customer Service Standards.**

The Grantee shall comply at all times with the customer service provisions set forth in 47 Code of Federal Regulations Parts 76.309, 76.1602 and 76.1603.

**3.16 Educational and Government Access Channels.**

A. Grantee's Provision of Education and Government Access Channels. Franchising Authority 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 Franchising Authority with ninety (90) days' prior notice. Upon request by the Franchising Authority, 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 Franchising Authority 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 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 Franchising Authority or other governmental entities. If programming time is not used by Franchising Authority and is available for sharing, the channels may be shared with other municipalities receiving programming from the common head end receive site location. The Franchising Authority 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 Franchising Authority, except for liability resulting from program time shared with other municipalities.

- B. Educational and Government Access Capital Contributions. At any time during the term of this Franchise the Franchising Authority may require that the Grantee prospectively provide a "Capital Contribution," paid annually during the remaining term of the Franchise, to be used specifically for educational and governmental access as provided for in Paragraph 3.16.A. ("Grantee's Provision of Educational and Government Access Channels"). The Franchising Authority shall give the Grantee ninety (90) days written notice of such a requirement. The amount of the Capital Contribution payable by the Grantee to the Franchising Authority shall not exceed One Dollar and Twenty Cents (\$1.20) per year per primary connection. The Franchising Authority agrees that all amounts due to the Franchising Authority by the Grantee as the Capital Contribution may be added to the price of cable services, prorated monthly, and collected from the Grantee's Subscribers as "external costs," as such term is used in 47 C.F.R. 76.922. In addition, all amounts paid as the Capital Contribution may be separately stated on Subscribers' bills as permitted in 47 C.F.R. 76.985. The Capital Contribution will be payable by Grantee to the Franchising Authority after; a) the approval of the Franchising Authority, if required, to the inclusion of the Capital Contribution on Subscribers' bills including any required approval pursuant to 47 C.F.R. 76.933; b) notice to Grantee's Subscribers of the inclusion; and c) the collection of the Capital Contribution by the Grantee from its Subscribers. The "Capital Contributions" are not to be considered in the calculation of Franchise Fees pursuant to this Franchise.

**3.17 Fees and Charges to Customers** All rates, fees, charges, deposits and associated terms and conditions to be imposed by the Grantee or any affiliated Person 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 Customers, which notice may be by any means permitted under applicable law.

**3.18 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.

## **SECTION 4**

### **Regulation by the Franchising Authority**

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

A. The Grantee shall pay to the Franchising Authority 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. The franchise fee payment shall be due quarterly and payable within sixty (60) 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.

**4.2 Rates and Charges.** The Franchising Authority 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 Franchising Authority and the Grantee agree that any proceedings undertaken by the Franchising Authority 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 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 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 Franchising Authority agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment, the Franchising Authority and the Grantee may agree to undertake and finalize informal negotiations regarding renewal of the then current Franchise and the Franchising Authority may grant a renewal thereof.

D. The Grantee and the Franchising Authority 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 Franchising Authority 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 Franchising Authority 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 Franchising Authority, the Grantee and the Franchising Authority 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 Franchising Authority 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 Franchising Authority, such consent not to be unreasonably withheld. 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 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) days after receiving such request, consent by the Franchising Authority shall be deemed given.

## **SECTION 5**

### **Books and Records**

**5.1 Books and Records.** The Grantee agrees that the Franchising Authority, 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 Franchising Authority. 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 Franchising Authority'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 Franchising Authority 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.

On an annual basis, upon thirty (30) days prior written notice, the Franchising Authority, including the Franchising Authority's Auditor or his/her authorized representative, shall have the right to conduct an independent audit of Grantee's records reasonably related to the administration and enforcement of this Franchise, in accordance with GAAP. If the audit shows that franchise fee payments have been underpaid by five percent (5%) or more, Grantee shall pay the total cost of the audit. Such cost shall not exceed five thousand dollars (\$5000) for each year of the audit period without Grantee's prior written consent. The Franchising Authority's right to audit and the Grantee's obligation to retain records related to a franchise fee audit shall expire three (3) years after each franchise fee payment has been made to the Franchising Authority.

## **SECTION 6**

### **Insurance and Indemnification**

**6.1 Insurance Requirements.** General Insurance Requirements for all Policies.

A. Any insurance coverage required herein that is written on a "claims made" form rather than on an "occurrence" form shall (i) provide full prior acts coverage or have a retroactive date before the effective date of this Franchise, and (ii) be maintained for a period of at least three (3) years following the end of the term of this Franchise or contain a comparable

“extended discovery” clause. Evidence of current extended discovery coverage and the purchase options available upon policy termination shall be provided to the Franchising Authority.

B. All policies of insurance shall be issued by insurance companies Franchised to do business in the state of Utah and either:

I A. Currently rated A- or better by A.M. Best Company; and

I B. For construction contracts only, the insurer must also have an A.M. Best Company financial size category rating of not less than VII.

—OR—

2. Listed in the United States Treasury Department’s current Listing of Approved Sureties (Department Circular 570), as amended.

C. The Grantee shall furnish certificates of insurance, on an ACCORD form or equivalent, verifying compliance with the insurance requirements herein.

D. In the event any work is subcontracted, the Grantee shall require its contractor, at no cost to the Franchising Authority, to secure and maintain all minimum insurance coverages required of the Grantee hereunder.

E. The Grantee's insurance policies shall be primary and non-contributory to any other coverage available to the Franchising Authority with respect to losses for which the Grantee is responsible hereunder.

F. In the event that governmental immunity limits are subsequently altered by legislation or judicial opinion, the Grantee shall provide a new certificate of insurance within thirty (30) days after being notified thereof in writing by the Franchising Authority, certifying coverage in compliance with the modified limits or, if no new limits are specified, in an amount acceptable to the Franchising Authority..

G. All required policies shall provide that notice of cancellation will be given in accordance with policy provisions.

H. In the event the Grantee fails to maintain and keep in force any insurance policies as required herein Franchising Authority shall have the right at its sole discretion to exercise its remedies for default hereunder.

**6.1.2 Required Insurance Policies.** The Grantee, at its own cost, shall secure and maintain during the term of this Franchise, including all renewal terms, the following minimum insurance coverage:

A. Workers’ compensation and employer’s liability insurance as required by the State of Utah, and employers liability coverage in the amount of \$1,000,000 per loss. Proof of workers' compensation coverage is required unless a waiver of coverage is allowed and acquired

pursuant to Utah law. This requirement includes contractors who are doing business as an individual and/or as a sole proprietor as well as corporations and partnerships. In the event any work is subcontracted, the Grantee shall require its contractor(s) similarly to provide workers' compensation insurance for all of the latter's employees, unless a waiver of coverage is allowed and acquired pursuant to Utah law.

B. Commercial general liability insurance, on an occurrence form, with the Franchising Authority as an additional insured, in the minimum amount of \$2,000,000 per occurrence with a \$2,000,000 general policy aggregate and \$2,000,000 products completed operations policy aggregate. The policy shall protect the Franchising Authority, the Grantee, and any contractor from claims for damages for personal injury, including accidental death, and from claims for property damage that may arise from the Grantee's operations under this Franchise, whether performed by the Grantee itself, any contractor, or anyone directly or indirectly employed or engaged by either of them. Such insurance shall provide coverage for premises operations, acts of independent contractors, and completed operations. The policy shall be primary and not contributing to any other policy or coverage available to the Franchising Authority whether such coverage is primary, contributing or excess.

C. Commercial automobile liability insurance that provides coverage for owned, hired, and non-owned automobiles, in the minimum amount of \$500,000 per person, \$500,000 per accident.

## **6.2 Indemnification.**

A. The Franchising Authority shall in no way be liable or responsible for any loss or damage to property or any injury to, or death of, any person that may occur in the construction, operation or maintenance by the Grantee of its Cable System.

B. The Grantee shall indemnify, hold harmless and defend the Franchising Authority, its officers, agents and employees from and against and all claims, demands, suits, costs, liens, liabilities, injuries and damages related to property damage, bodily injury and/or accidental death, resulting directly or indirectly from, or arising out of: 1) any acts or omissions of or by the Grantee, its agents, representatives, officers, employees, or subcontractors in connection with the Grantee's use of the Public Rights-of-Way within the Franchising Authority; or 2) the Grantee's failure to inspect, discover, correct or otherwise address any defect, dangerous condition or other condition created by or resulting from the Grantee's use of the Public Rights-of-Way within the Franchising Authority. The Grantee agrees that its duty to defend, hold harmless and indemnify the Franchising Authority under this Franchise includes reasonable attorney's fees, litigation and court costs and expert witness fees.

C. Notwithstanding any provision hereof to the contrary, the Grantee shall not be obligated to indemnify, defend or hold the Franchising Authority harmless to the extent any claim, demand, suit, cost, lien, liability, injury or damage arises out of or in connection with any negligent or willful act or failure to act of the Franchising Authority or any of its officers, agents or employees.



## SECTION 7

### Enforcement and Termination of Franchise

**7.1 Notice of Violation.** In the event that the Franchising Authority believes that the Grantee has not complied with the terms of the Franchise, the Franchising Authority shall 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.

**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 Franchising Authority, 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 Franchising Authority 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 Franchising Authority shall schedule a public hearing. The Franchising Authority 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 Franchising Authority, after the hearing set forth in subsection 7.3, determines that the Grantee is in default of any provision of the Franchise, the Franchising Authority 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 Franchising Authority seek to revoke the Franchise after following the procedures set forth in subsections 7.1-7.4 above, the Franchising Authority 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 Franchising Authority has not received a satisfactory response from the Grantee, it may then seek termination of the Franchise at a public hearing. The Franchising Authority 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 Franchising Authority 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 Franchising Authority *de novo*. Such appeal to the appropriate court must be taken within sixty (60) days of the issuance of the determination of the Franchising Authority.

The Franchising Authority may, at its sole discretion, take any lawful action which it deems appropriate to enforce the Franchising Authority'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 Franchising Authority'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 Franchising Authority and/or Subscribers.

## **SECTION 8**

### **Miscellaneous Provisions**

**8.1 Actions 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.

**8.2 Entire Agreement.** This Franchise constitutes the entire agreement between the Grantee and the Franchising Authority. 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 Franchising Authority 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 Franchising Authority shall be addressed as follows:

Draper City  
Attn: City Manager  
1020 E. Pioneer Road  
Draper, Utah 84020

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

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

With a copy to:

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

The Franchising Authority 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 1<sup>st</sup> day of March, 2016 pursuant to the provisions of applicable law. This Franchise shall expire on the 1<sup>st</sup> day of March, 2026 unless extended by the mutual agreement of the parties.

Considered and approved this \_\_\_\_\_ day of March, 2016.

Draper City

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Troy K. Walker, Mayor

ATTEST:

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Rachelle Conner  
City Recorder

Accepted this \_\_\_\_ day of March, 2016, subject to applicable federal, state and local law.

Comcast of Utah II, Inc.

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