

HA&T DRAFT 1-18-21

FOR DISCUSSION PURPOSES ONLY

**Gloucester County and  
Cox Communications  
Cable Television Franchise  
Agreement**

DRAFT

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FOR DISCUSSION PURPOSES ONLY

## **Cable Franchise Agreement**

**THIS CABLE FRANCHISE AGREEMENT** (the “Franchise” or “Agreement”) is entered into by and between the County of Gloucester, Virginia, a political subdivision of the Commonwealth of Virginia (the “County”) and Cox Communications Hampton Roads, LLC, a corporation duly organized under the applicable laws of the State of Delaware (“Cox”).

WHEREAS, the County wishes to grant Cox a nonexclusive franchise to construct, install, maintain, extend and operate a cable communications system in the Franchise Area as designated in this Franchise; and

WHEREAS, the County is a “franchising authority” in accordance with Title VI of the Communications Act (*see* 47 U.S.C. §522(10)) and is authorized to grant one or more nonexclusive cable franchises pursuant to Va. Code § 15.2-2108.20(A); and

WHEREAS, Cox has constructed and operates a Cable System in the Franchise Area for the transmission of Cable Service; and

WHEREAS, the Cable System occupies the Public Rights-of-Way within the County; and

WHEREAS, the County and Cox have reached agreement on the terms and conditions set forth herein and the parties have agreed to be bound by those terms and conditions.

NOW, THEREFORE, in consideration of the County’s grant of a franchise to Cox, Cox’s promise to provide Cable Service to residents of the Franchise Area pursuant to and consistent with the Communications Act (as hereinafter defined), pursuant to the terms and conditions set forth herein, the promises and undertakings herein, and other good and valuable consideration, the receipt and the adequacy of which are hereby acknowledged,

THE SIGNATORIES DO HEREBY AGREE AS FOLLOWS:

### **1. DEFINITIONS**

Except as otherwise provided herein, the definitions and word usages set forth in the Communications Act (as hereinafter defined) are incorporated herein and shall apply in this Agreement. References in this section to any federal or state law shall include amendments thereto as may be enacted from time-to-time. In addition, the following definitions shall apply:

1.1. *Access Channel or EG Access Channel*: A video Channel, which Cox shall make available to the County without charge for non-commercial EG use for the transmission of video programming as directed by the County or Gloucester County Public Schools.

1.2. *Affiliate*: In relation to any Person, another Person who owns or controls, is owned or controlled by, or is under common ownership or control with, such Person.

1.3. *Basic Service*: A Cable Service tier that includes (i) the retransmission of local television broadcast Channels and (ii) EG Access Channels required to be carried in the basic tier.

1.4. *Cable Operator*: Any person or group of persons who provides Cable Service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system or who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system.

1.5. *Cable Service or Cable Services*: The one-way transmission to subscribers of (i) Video Programming or (ii) other programming service, and subscriber interaction, if any, which is required for the selection or use of such Video Programming or other programming service. Cable service does not include any Video Programming provided by a commercial mobile service provider defined in 47 U.S.C. § 332(d).

1.6. *Cable System or System*: Cox'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 Franchise Area, except that such term shall not include (i) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (ii) a facility that serves only Subscribers without using any Public Rights-of-Way; (iii) a facility of a common carrier that is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, 47 U.S.C. § 201 *et seq.*, except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of Video Programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (iv) an open video system that complies with § 653 of Title VI of the Communications Act of 1934, as amended, 47 U.S.C. § 573; or (v) any facilities of any electric utility used solely for operating its electric utility systems.

1.7. *Channel*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(4), meaning a portion of the electromagnetic spectrum which is used in a cable system and which is capable of delivering a television channel, as defined by the Federal Communications Commission by regulation.

1.8. *Communications Act*: The Communications Act of 1934, as amended.

1.9. *County*: Gloucester County, Virginia.

1.10. *Demarcation Point*: shall be a point agreed upon by Franchisee and the County up to twelve (12) inches inside the building wall and consistent with Franchisee's direction of approach to the building, consistent with the FCC's rules as of the Effective Date of this Franchise Agreement or as later amended. For purposes of EG upstream feeds, a Demarcation Point shall be the point at which the equipment owned by the EG origination site interconnects with Franchisee's wiring and electronics.

1.11. *Educational Access Channel*: Any Channel required by this Franchise Agreement to be provided by Cox to the County and set aside for non-commercial educational use.

- 1.12. *EG*: Educational and governmental.
- 1.13. *EG Provider*: Any entity designated by the County to operate one or more Access Channels.
- 1.14. *FCC*: The United States Federal Communications Commission or successor governmental entity thereto.
- 1.15. *Force Majeure*: An event or events reasonably beyond the ability of the cable operator to anticipate and control. "Force majeure" includes, but is not limited to, acts of God, incidences of terrorism, war or riots, labor strikes or civil disturbances, floods, earthquakes, fire, explosions, epidemics, hurricanes, tornadoes, governmental actions and restrictions, work delays caused by waiting for utility providers to service or monitor or provide access to utility poles to which the cable operator's facilities are attached or to be attached or conduits in which the cable operator's facilities are located or to be located, and unavailability of materials or qualified labor to perform the work necessary.
- 1.16. *Franchise Area*: The entire existing territorial limits of the County and such additional areas as may be included in the territorial limits of the County during the term of this Franchise.
- 1.17. *Franchisee or Cox*: Cox Communications Hampton Roads, LLC, and any lawful and permitted successors, assigns and transferees.
- 1.18. *Government Access Channel*: Any Channel required by this Franchise Agreement to be provided by Cox to the County and set aside for non-commercial government use.
- 1.19. *Gross Revenue*: All revenue, as determined in accordance with generally accepted accounting principles, that is actually received by Cox and derived from the operation of the Cable System to provide Cable Services in the Franchise Area; "Gross Revenue" shall not include: (i) refunds or rebates made to subscribers or other third parties; (ii) any revenue which is received from the sale of merchandise over home shopping channels carried on the Cable System, but not including revenue received from home shopping channels for the use of the Cable Service to sell merchandise; (iii) any tax, fee, or charge collected by Cox and remitted to a governmental entity or its agent or designee, including without limitation a local public access or education group; (iv) program launch fees; (v) directory or Internet advertising revenue including, but not limited to, yellow page, white page, banner advertisement, and electronic publishing; (vi) a sale of Cable Service for resale or for use as a component part of or for the integration into Cable Services to be resold in the ordinary course of business, when the reseller is required to pay or collect franchise fees or similar fees on the resale of the Cable Service; (vii) revenues received by any affiliate or any other person in exchange for supplying goods or services used by Cox to provide Cable Service; and (viii) revenue derived from services classified as Non-Cable Services under federal law, including, without limitation, revenue derived from telecommunications services and information services, and any other revenues attributed by Cox to Non-Cable Services in accordance with rules, regulations, standards, or orders of the Federal Communications Commission.
- 1.20. *Non-Cable Services*: Any service that does not constitute the provision of Cable Service.

1.21. *Normal Business Hours*: Those hours during which most similar businesses in the community are open to serve customers. In all cases, “normal business hours” must include some evening hours at least one night per week and/or some weekend hours.

1.22. *Normal Operating Conditions*: Those service conditions which are within the control of Cox, except during periods in which Force Majeure applies. Those conditions which are ordinarily within the control of Cox include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or rebuild of the Cable System.

1.23. *Person*: An individual, partnership, association, joint stock company, trust, corporation, or governmental entity.

1.24. *Public Rights-of-Way*: The surface and the area across, in, over, along, upon and below the surface of the public streets, roads, bridges, sidewalks, lanes, courts, ways, alleys, and boulevards, including, public utility easements and public lands and waterways used as Public Rights-of-Way, as the same now or may thereafter exist, which are within the jurisdiction or control of the County. Public Rights-of-Way do not include the airwaves above a right-of-way with regard to cellular or other non-wire communications or broadcast services.

1.25. *Service Interruption*: The loss of picture or sound on one or more cable channels.

1.26. *Subscriber*: A Person who lawfully receives Cable Service over the Cable System with Cox’s express permission.

1.27. *Tap*: A passive device located on a pole or in a pedestal in the Public Right of Way that is installed on the main cable and that is the connection point for the cable drop to the customer premises.

1.28. *Transfer of the Franchise*: Any transaction in which (i) an ownership or other interest in the Franchisee is transferred, directly or indirectly, from one person or group of persons to another person or group of persons, so that majority control of the Franchisee is transferred; or (ii) the rights and obligations held by the Franchisee under the Franchise are transferred or assigned to another person or group of persons.

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

## 2. **GRANT OF AUTHORITY; LIMITS AND RESERVATIONS**

2.1. *Grant of Authority*: Subject to the terms and conditions of this Agreement and the Communications Act, the County hereby grants Cox the right to own, construct, operate and maintain a Cable System along the Public Rights-of-Way within the Franchise Area, in order to provide Cable Service. Nothing in this Franchise shall limit the rights of Cox to offer any service over its Cable System unless otherwise provided in federal, State, or County law. No privilege or power of eminent domain is bestowed

by this grant; nor is such a privilege or power bestowed by this Agreement. This Agreement does not confer any rights other than as expressly provided herein or as mandated by federal, state or local law.

2.2. *Term:* The Franchise and this Franchise Agreement shall become effective at 12:01 a.m. on \_\_\_\_\_, 2021 (the “Effective Date”) and shall expire at 12:01 a.m. on \_\_\_\_\_, 2031, unless the Franchise is earlier revoked or its Term shortened as provided herein, or unless the Franchise is renewed or extended by mutual agreement.

2.3. *Grant Not Exclusive:* The Franchise and the rights granted herein to use and occupy the Public Rights-of-Way to provide Cable Services shall not be exclusive, and the County reserves the right to grant other franchises for similar uses or for other uses of the Public Rights-of-Way, or any portions thereof, to any Person, or to make any such use themselves, at any time during the term of this Franchise. Any such rights which are granted shall not expressly alter or purport to alter the authority as granted under this Franchise or expressly grant authority or purport to grant authority to interfere with existing physical facilities, including equipment, of the Cable System.

2.4. *Franchise Subject to Federal Law:* Notwithstanding any provision to the contrary herein, this Franchise is subject to and shall be governed by all applicable provisions of federal law as it may be amended, including but not limited to the Communications Act.

2.5. *No Waiver:*

2.5.1. The failure of the County on one or more occasions to exercise a right or to require compliance or performance under this Franchise, the Communications Act or any other applicable state or federal law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance by the County, nor to excuse Cox from complying or performing, unless such right or such compliance or performance has been specifically waived in writing.

2.5.2. The failure of Cox on one or more occasions to exercise a right under this Franchise or applicable law, or to require performance under this Franchise, shall not be deemed to constitute a waiver of such right or of performance of this Agreement, nor shall it excuse the County from performance, unless such right or performance has been specifically waived in writing.

2.6. *Construction of Agreement:*

2.6.1. Nothing herein shall be construed to limit the scope or applicability of Section 625 Communications Act, 47 U.S.C. § 545, or Virginia Code §§ 15.2-2108.19 – 2108.32.

2.6.2. *Precedence of Documents:* In the event of a conflict between a cable ordinance and this Agreement, this Agreement shall prevail. In the case of a conflict between a cable ordinance and Virginia Code Sections 15.2-2108.19 – 2108.32, the Virginia Code shall prevail, unless an otherwise applicable Virginia Code provision is preempted by federal law.

2.6.3. *Police Powers:* Cox’s rights are subject to the police powers of the County to adopt and enforce ordinances of general applicability necessary to protect and preserve the health, safety and welfare of the public. Cox shall comply with all applicable general laws and ordinances

enacted by the County pursuant to those powers. In the event of conflict between the Cable Ordinance (and any amendments thereto) and this Agreement, the Agreement shall control.

2.6.4. *Delegation of Rights, Powers, and Duties:* Any delegable right, power, or duty of the County under the Cable Ordinance or the Franchise may be transferred or delegated to an appropriate officer, employee, or department of the County.

### 3. **PROVISION OF CABLE SERVICE**

#### 3.1. *Service Area:*

3.1.1. *Density Requirement:* The Franchisee shall extend the Cable System whenever the Franchisee receives a request for Cable Service from a potential Subscriber and there is an average of at least twenty-four (24) dwelling units per mile along a line extension route to the subscriber's residence, measured in linear trench or aerial strand footage along the Public Right-of-Way. The distance shall be measured from the nearest technically feasible point on the active Cable System that will maintain the Franchisee's minimum subscriber levels of signal and quality for its services and that is closest to the address requesting service (the "Starting Point"), and ending at the point on the Public Right-of-Way nearest to the point where the requesting potential Subscriber's route of vehicular ingress or egress contacts the public right-of-way (the "End Point"). For purposes of this section, a house, apartment unit, or other residence shall only be counted as a "dwelling unit" if it is occupied and the point of cable access is located within 300 feet of the Public Right-of-Way.

3.1.2. *Service Drops:* The Franchisee shall extend its Cable System to potential Subscribers at no cost to said potential Subscribers other than the Franchisee's standard charge for a standard service drop (the "Standard Installation Fee"), provided that, if the point at which electric utility facilities enter the building (the "Entry Point") is located more than 250 feet from the Tap installed to serve that Subscriber, the Franchisee may charge an installation fee equal to the Standard Installation Fee, plus the actual cost of construction (defined as time and materials with a reasonable allocation for administrative costs) of Cable System facilities in excess of the 250 foot distance.

3.1.3. *Cost Sharing:* If the conditions of Sections 3.1.1 are not met, the Franchisee shall only be required to extend the Cable System if the Subscribers in and area requesting Cable Service are willing to share the capital costs of extending the Cable System by making a capital contribution in aid of construction including cost of material, design, labor and easements. Subscribers who request service hereunder shall bear the construction costs on a pro rata basis. The Franchisee may require that the payment of the capital contribution in aid of construction borne by potential subscribers be paid in advance. Subscribers shall also be responsible for any applicable installation charges to extend the Cable System from the tap to the residence.

3.2. *Availability of Cable Service:* Franchisee shall make Cable Service available to all residential dwelling units within the Franchise Area in conformance with Section 3.1, and Franchisee shall not discriminate between or among any individuals in the availability of Cable Service. The Franchisee shall make Cable Service available to any commercial establishment in the County that requests such service, provided that each such establishment enters into a separately negotiated contract with the Franchisee.



4. **SYSTEM FACILITIES**

4.1. *System Characteristics*: Cox's Cable System shall meet or exceed the following requirements:

4.1.1. The System shall be designed with a minimum analog and/or digital carrier passband between 50 and 750 MHz.

4.1.2. The System shall be designed to be an active two-way plant for subscriber interaction, if any, required for selection or use of Cable Service.

4.1.3. Modern design utilizing an architecture that will permit additional improvements necessary for high quality and reliable service throughout the term of the Agreement.

4.1.4. Protection against outages due to power failures, so that back-up power is available at a minimum for at least 24 hours at the headend, and conforming to industry standards, but in no event rated for less than four hours, at each node. Such standby power supplies shall cut in automatically on failure of commercial utility AC power, and revert automatically to commercial power when it is restored.

4.1.5. Facilities and equipment sufficient to cure violations of any applicable FCC technical standards and to ensure that the Cable System remains in compliance with the standards specified in Section 4.1.18.

4.1.6. Facilities and equipment as necessary to maintain, operate, and evaluate the Cable System to comply with any applicable FCC technical standards, as such standards may be amended from time to time.

4.1.7. All facilities and equipment designed to be capable of continuous twenty-four (24) hour daily operation in accordance with applicable FCC standards except as caused by a Force Majeure event.

4.1.8. All facilities and equipment designed, built and operated in such a manner as to comply with all applicable FCC requirements regarding (i) consumer electronic equipment and (ii) interference with the reception of off-the-air signals by a subscriber.

4.1.9. All facilities and equipment designed, built and operated in compliance with all applicable safety codes.

4.1.10. Sufficient trucks, tools, testing equipment, monitoring devices and other equipment and facilities and trained and skilled personnel required to enable Cox to substantially comply with applicable law and its obligations under this Agreement, including applicable customer service standards.

4.1.11. All facilities and equipment required to properly test the Cable System in accordance with applicable law, conduct an ongoing and active program of preventive maintenance and quality control, and to be able to quickly respond to customer complaints and resolve system problems.

4.1.12. Design capable of interconnecting with other cable systems in the Franchise Area as set forth in Section 4.3 of this Agreement.

4.1.13. Facilities and equipment at the headend shall allow Cox to transmit or cablecast signals in substantially the form received, without substantial alteration or deterioration in the content and functionalities associated with the signal. For example, the headend should include equipment that will transmit color video signals received at the headend in color, stereo audio signals received at the headend in stereo, and a signal received with a secondary audio track with both audio tracks. Similarly, all closed-captioned programming retransmitted over the Cable System shall include the closed-captioned signal in a manner that renders that signal available to Subscriber equipment used to decode the captioning.

4.1.14. Shall be capable of transmitting in high definition any Channels that are received in high definition format. Actual carriage of any such high definition Channels other than the Access Channels will be at Cox's sole discretion.

4.1.15. Shall offer parental control options, which will at a minimum offer as an option that a Person ordering programming must provide a personal identification number or other means provided by Cox only to a Subscriber. Provided, however, that Cox shall bear no responsibility for the exercise of parental controls and shall incur no liability for any Subscriber's or viewer's exercise or failure to exercise such controls.

4.1.16. The provision of additional channels, channel capacity, and/or upgrades of any kind to the Cable System is solely within the control and discretion of Cox.

4.1.17. With the exception of any EG Channels, all content and programming of Cable Services, including the mix, level, and/or quality of such content and programming, remains in the sole discretion of Cox.

4.1.18. The Cable System must conform to or exceed all applicable FCC technical performance standards, as amended from time to time, and shall substantially conform in all material respects to applicable sections of the following standards and regulations to the extent such standards and regulations remain in effect and are consistent with accepted and applicable industry procedures:

4.1.18.1. Occupational Safety and Health Administration ("OSHA") Safety and Health Standards;

4.1.18.2. National Electrical Code;

4.1.18.3. National Electrical Safety Code ("NESC");

4.1.18.4. Obstruction Marking and Lighting, AC 70/7460 i.e., Federal Aviation Administration;

4.1.18.5. Constructing, Marking and Lighting of Antenna Structures, Federal Communications Commission Rules, Part 17; and

4.1.18.6. The Virginia Uniform Statewide Building Code.

4.1.19. Cox shall maintain minimum NESC height clearances in the Public Rights of Way where Cox owns the pole. Where the pole is owned by an entity other than Cox, it shall maintain minimum NESC height clearances in the Public Rights of Way subject to its pole attachment agreement with the pole owner and the utility spacing requirements for users of such pole.

4.2. *General Description:* The Cable System shall meet or exceed applicable FCC technical standards (Subpart K of Part 76 of the FCC's Rules).

4.3. *Interconnection:* Cox shall design its Cable System so that it may be interconnected with other cable systems in the Franchise Area. Interconnection of systems may be made by direct cable connection, microwave link, satellite, or other appropriate methods.

4.4. *Emergency Alert System:* Cox shall comply with the Emergency Alert System ("EAS") requirements of the FCC in order that emergency messages may be distributed over the System.

4.5. *Restoration of Property:* Cox shall promptly repair and restore, to as good a condition as reasonably practicable before the work causing such disturbance was done, any and all Public Rights-of-Way and public or private property that is disturbed or damaged during the construction, operation or maintenance of the Cable System. Any restoration of non-commercial private property by Cox shall be done in accordance with Cox's contractual obligations to affected landowners, except to the extent that any such contractual obligations conflict with the requirements of this section. If Cox fails to restore or repair Public Rights-of-Way or public property that has been damaged or is disturbed within thirty (30) days, the County may perform the necessary repairs and restoration, and submit an invoice for said expense. If payment is not made within thirty (30) days, the County may obtain reimbursement from the letter of credit provided pursuant to Article 13.

4.6. *Relocation of Facilities:* In the event that a location or a grade, line, or other characteristic of a portion of the Public-Rights-of-Way that Cox is authorized to use or occupy is altered by the County for the purpose of a public works project that requires the relocation of all users of the Public Rights-of-Way, Cox shall, at its sole expense, relocate or otherwise modify its Cable System so as to conform to the new location of the new grade, line or other right-of-way characteristic. If the County controls public funds from any source that are available to any other user of the Public Rights-of-Way for the purpose of defraying the cost of any of the foregoing, the County shall notify Cox of the availability of such funding and make such funds available on an equal basis to Cox. It is understood that there is no guarantee by the County that public funds will, in every instance, be available to defray costs of altering or relocating the cable system to conform to new grades or lines. In addition, Cox shall obtain a relocation deed, if required by law. All relocation costs of the Cable System for any other purpose shall be paid by the entity requesting the relocation of the Cable System.

## 5. **EDUCATIONAL AND GOVERNMENTAL ACCESS SERVICES**

5.1. *Educational and Government (EG) Access Channels:*

5.1.1. Franchisee, at no charge to the County, shall provide three (3) Access Channels. The Access Channels shall be placed on Franchisee's Basic Service Tier. As of the Effective Date, the standard definition EG Channels are located on Channels 46, 47, and 48. Franchisee may, upon written request to County, which shall not be unreasonably denied, utilize any Access Channel for programming when it is not scheduled for EG use. County and Franchisee shall establish rules and procedures for such alternative use by Franchisee in accordance with Section 611 of the Cable Act (47 U.S.C. § 531).

5.1.2. County may not request additional Channel capacity beyond the three (3) Access Channels for EG use except in accordance with applicable law. County shall be responsible for all programming requirements, including but not limited to scheduling, playback, training, staffing, copyright clearances, and equipment, maintenance and repair.

5.1.3. Within ninety (90) days of the Effective Date, the Access Channels shall be carried on the Cable System in digital, high definition format. Franchisee shall be responsible for the costs of all Access Channels fiber transport equipment required in order for Franchisee to receive and distribute the Franchisee's HD EG Channel signal. At all times the Access Channels shall be capable of carrying secondary audio, subcarrier text and closed captioning information. Franchisee shall deliver to subscribers Access Channel programming without change in its content. Franchisee shall not exercise any editorial control over the Access Channels.

5.1.4. All programming transmitted over the Access Channels shall be non-commercial in nature. Franchisee and County agree that the County, schools or any producer of such programming may include acknowledgments for Persons who sponsor or underwrite access programming in a manner consistent with the underwriting guidelines published by the Public Broadcasting System (PBS).

5.2. *EG Operations:* County may, in its sole discretion, negotiate agreements with neighboring jurisdictions served by the same Franchisee, educational institutions or others to share the expenses of supporting the Access Channels. Upon written request by the County, Franchisee agrees to meet annually, at a mutually agreed place and time, to discuss issues related to the use of the Access Channels. Such issues may include technical changes planned by Franchisee or the County, sharing of information regarding equipment used, needed or recommended in connection with producing, encoding, and transmitting programming from the EG origination points in the County or the Franchisee's headend, and other mutually agreeable topics.

5.3. *Relocation of Access Channels:* Franchisee may relocate any Access Channel to a different Channel number. Franchisee shall provide County and all Subscribers with at least thirty (30) days prior written notice of any relocation. In the event any Access Channel is relocated, Franchisee shall reimburse County up to Two Thousand Five Hundred and No/100 Dollars (\$2,500.00) for documented costs associated with such relocation incurred by the County.

5.4. *EG Access Support:* Franchisee shall provide an EG Capital Grant to the County on a quarterly basis which shall be used by the County to support the capital costs of Access Channel facilities and equipment consistent with the Communications Act (47 U.S.C. § 542). As of the Effective Date of this Agreement, the amount of the EG Capital Grant shall be Thirty Cents (\$0.30) per Subscriber per month. Upon ninety (90) days written notice to Cox by the County, the amount of the EG Capital Grant may be increased to a maximum of Forty-Five Cents (\$0.45) per Subscriber per month. Franchisee shall be permitted to designate the cost of the EG Capital Grant as a separate line item on Subscriber bills.

5.5. *EG Origination Points:*

5.5.1. Within ninety (90) days of the Effective Date, the Franchisee shall provide, at its sole expense, (i) a dedicated fiber transport of a single channel of programming from Colonial Courthouse to TC Walker Education Center, and (ii) a dedicated fiber optic transport of the Access Channels programming from TC Walker Education Center to its headend.

5.5.2. EG signal transport links provided by Franchisee shall include all equipment necessary for amplification, optical conversion, receiving, transmitting, and headend processing of EG transport signals for the transport links specified in Section 5.5.1. However, the Franchisee shall not be responsible for any EG switching or other equipment on the Access Channels side of the Demarcation Point.

5.5.3. All such equipment, including but not limited to the fiber electronics, shall be installed, repaired, and maintained in good working order by Franchisee on Franchisee's side of the Demarcation Point, provided, however, that Franchisee shall not be responsible for the cost of repairing any damage caused by the operator of an EG location or its agents or invitees. Franchisee's obligation with respect to such signal transport shall be dependent on the operator of an EG location providing the Franchisee, without charge, with such space, electrical power supply, access, and other reasonable facilities and cooperation as shall be necessary to allow Franchisee to fulfill its duties under this Franchise with respect to such signal transport. The EG signal transport links may be multiplexed into backbone fiber rings at a hub or node.

5.5.4. EG signal transport links shall comply with industry and FCC technical standards for transmission and reception of high-quality HD transport and have no significant deterioration in the quality of EG signals, using dedicated capacity sufficient for high-quality transmission.

5.5.5. Franchisee will provide headend and distribution facilities for downstream transmission of the EG Channels on the Cable System at no charge to the County or other EG access programmers.

5.5.6. The County may designate up to three (3) additional Access Channel origination points. Franchisee shall construct connections from these origination points to TC Walker Education Center to allow the airing of EG programming on any of the Access Channels within twelve (12) months of any such request. County shall reimburse Franchisee's cost (defined as time and materials with a reasonable allocation for administrative costs) for the additional origination points and any necessary equipment. After construction of the links, the County shall bear the cost of maintenance.

5.5.7. If County-owned conduit suitable for the placement of the Franchisee's facilities exists along any portion of a route between an Access Channel origination facility and the Franchisee's headend, and the County determines that it has conduit capacity available in excess of its likely needs for the foreseeable future, the parties shall meet in good faith to discuss the use of such conduit. Unless otherwise prohibited by law, the Franchisee may agree to use such conduit and the County may make such conduit available if such use would lower the cost of installation of Franchisee's facilities. If suitable County-owned conduit is available and the use of such conduit would reduce the cost of construction to serve an Access Channel facility, but Franchisee elects not to use such conduit, any amount that the County or an EG management entity would be required to pay pursuant to Section 5.5.6 above shall be reduced by the amount by which the use of suitable County conduit would reduce the total cost of the project.

5.6. *Access Channel Technical Standards:* The Access Channels shall be carried in compliance with all applicable FCC rules. All Access Channels shall meet the same FCC technical standards applicable to the commercial channels carried on the Basic Tier, provided that the Franchisee shall not be responsible for the production quality of EG access programming. All Access Channels shall be carried in a manner providing the same signal quality as other channels of the same category (meaning high definition) Franchisee provides for on the Basic Service Tier. In addition, in the event the County desires to implement additional functionality on one or more of the Access Channels comparable to additional functionality available on any other channel on the Basic Service tier, the Franchisee shall cooperate with the County to make such functionality available, provided that implementation of such functionality does not require the use of additional capacity on the System, or impose any cost on Franchisee.

5.7. *EG Programming Description:* The parties acknowledge that Franchisee's Cable System design and implementation currently will not permit the ability to place EG Channel programming in the Electronic Program Guide ("EPG") and that the Franchisee contracts with a third party or parties to provide its EPG. At any point during the term of the Franchise, should the system design and implementation change such that this ability is now permitted, or should Franchisee make available EG Channel programming in the EPG for any jurisdiction within the Hampton Roads region, then Franchisee will make available the same EPG functionality on the same terms and conditions to the County, and it shall be the responsibility of the County to provide such detailed program information to the third party entity or entities that produce such listings for the Franchisee in accordance with each such entity's normal format and scheduling requirements. The Franchisee shall not be liable for any errors or omissions caused by such third party. Additional Franchisee cost for EPG services incurred as a result of adding County programming information shall be paid by the County.

5.8. *Drops to Designated Buildings:*

5.8.1. Subject to the terms of this Section 5.8, Cox shall install upon request a service outlet at each facility occupied by a public office or agency in the County, to include without limitation County government agencies, fire stations, police stations, sheriff's offices, public schools, public libraries, and any other local government building as shall be designated by the County from time to time (each, a "Public Facility") (i) that is within the Franchise Area, and (ii) to which Cox is granted access rights. The County shall secure any necessary right of entry required for Cox to install its facilities. Cox shall maintain, at no charge, a service outlet at each of the existing Public Facilities listed on Exhibit A. In addition, subject to subsection 5.8.2 below, within one hundred eighty (180) days after receiving a written request from the County for Cable Service to a Public Facility not currently served by Cox ("New County Facility Service Request"), Cox shall install and maintain a service outlet at each new Public Facility, as designated by the County from time to time.

5.8.2. If a new Public Facility is located within two hundred fifty (250) feet of the Public Rights-of-Way, then Cox shall bear the cost of installation so long as such additional Public Facilities do not exceed five (5) per calendar year. If such a Public Facility is located more than two hundred fifty (250) feet from the Public Rights-of-Way, then the County shall reimburse Cox for the difference between the actual cost of installation and the actual cost of constructing facilities to serve up to two hundred fifty (250) feet from the Public Rights-of-Way. At the time Basic Service is provided as a result of a New County Facility Service Request, if Cox elected to install facilities for the purpose of serving subscribers other than the government users located at such new Public Facility, then the County will be responsible

for reimbursing Cox only for the County's pro rata share of the cost of construction to such new Public Facility.

5.8.3. If County-owned conduit suitable for the placement of Cox's facilities exists along any portion of a route capable of extending service to a Public Facility, and the County determines that it has conduit capacity available in excess of its likely needs for the foreseeable future, the parties shall meet in good faith to discuss the use of such conduit. Unless otherwise prohibited by law, Cox may agree to use such conduit and the County may make such conduit available to Cox on a sole-use basis if such use would lower the cost of installation of Cox's facilities needed to serve a Public Facility that is more than two hundred fifty (250) feet from the Public Rights-of-Way. If suitable County- owned conduit is available to Cox on a sole-use basis and the use of such conduit would reduce the cost of construction to serve a Public Facility, but Franchisee elects not to use such conduit, any amount that the County would be required to pay pursuant to Section 5.8.2 above shall be reduced by the amount by which the use of County conduit would reduce the total cost of the project.

5.8.4. Cox shall provide Basic Service to each Public Facility.

5.8.5. There shall be no charge to the County or other entity or agency receiving service at a Public Facility for the cost of Basic Service, except for equipment costs as provided for in this section. There shall be no charge to the County or other entity or agency receiving service at a Public Facility for the cost of installation or the cost of maintenance except as provided in this Section 5.8. There also shall be no charge to the County or other entity or agency receiving service at a Public Facility for the cost of one converter or digital transport adapter at each such Public Facility.

5.8.6. The cost of inside wiring, additional drops or outlets, or additional converters or digital transport adapters requested by the County within these Public Facilities, including those drops or outlets in excess of those currently installed, are the responsibility of the County. The County or any public body responsible for managing a Public Facility may, at its expense, extend or install suitable wiring to permit Cable Service to be provided at multiple locations within the Public Facility. In addition, the County may request that the Franchisee install sufficient capacity and suitable equipment to ensure that all signals are provided at such additional outlets with sufficient strength to supply the entire Public Facility, taking into account the number of outlets to be served, the distance signals will be transported, and all technical factors necessary to ensure that all outlets receive a suitable signal. Upon Franchisee's request, the County shall provide specifications for serving a Public Facility in writing to the Franchisee. In constructing all facilities required under this Section 5.8.6, the Franchisee shall ensure that it meets the County's actual needs at each location. If meeting the County's needs for delivery of a suitable signal imposes costs on the Franchisee beyond the costs the Franchisee would bear in the absence of such requirements, the Franchisee may require that the County reimburse the difference, subject to Sections 5.8.2 and 5.8.3 hereof. Cox shall not be responsible for any violations of FCC technical standards on the County's side of the Demarcation Point. After reasonable notice under the circumstances, Cox may temporarily disconnect its service to a County site that does not correct such violations of FCC technical standards until such time as such violations are corrected.

## **6. VIRGINIA COMMUNICATIONS SALES AND USE TAX AND FCC 621 ORDER**

6.1. *Complimentary Service:* The County and Franchisee agree that Franchisee's provision of Basic Cable Service and the next highest level of Cable Service generally available to all Subscribers (currently known as TV Essential service, or its successor tier), the equipment needed to receive such services, the connections listed in Section 5.8, and the maintenance of the EG transport links provided pursuant to Section 5.5 are "Complimentary Service." The fiber optic EG transport links provided pursuant to Section 5.5 and the channel capacity dedicated for use as the Access Channels are not deemed "Complimentary Service." In the event the Virginia Communications Sales and Use Tax (Va. Code §§ 58.1-645 – 662 ) is found by a court or agency of competent jurisdiction to be a franchise fee as defined by 47 U.S. Code § 542, such Complimentary Service may be terminated by Franchisee, at its sole discretion, upon one hundred twenty (120) days' written notice to the County, subject to Section 6.2.

6.2. *Franchisee Options:* In the event Franchisee is legally permitted, in accordance with applicable law, to offset the value of additional elements of Cable Service against Franchise Fees payable to the County, the Franchisee reserves its rights to do so. Should the Franchisee choose to offset any or all of such Cable Service against Franchise Fees payable to the County, it agrees to provide the County with one hundred twenty (120) days' prior written notice. Such offsets shall be on similar terms and conditions as other localities served by the Franchisee in the Hampton Roads region and where Franchisee is legally authorized to impose said offset.

6.3. *County Options:* The County shall have right to discontinue receipt of all or any portion of Complimentary Service a provided by Franchisee in the event Franchisee elects to offset or impose a charge against the County for the value of such services as provided in Section 6.2. The County shall have the option of (1) requesting that Franchisee apply its regular and nondiscriminatory market rate as an offset against its franchise fee payments; or (2) paying Franchisee directly. Franchisee and County do not waive any rights under applicable law regarding Complimentary Service.

6.4. *FCC 621 Order:* In the event the FCC's 2019 Third Report and Order In the Matter of Implementation of Section 621 of the Cable Act is reversed as to the issue of complimentary cable services as in-kind contributions in a cable franchise, whether as a result of a subsequent FCC order, a final non-appealable court decision, or federal legislation, within thirty (30) days of the result becoming final Franchisee will discontinue any charges for Complimentary Service, and provide such services to the County free of charge. Any additional levels of cable service, outlets, or service locations ordered by the County shall continue to be subject to regular non-discriminatory market rates.

## 7. **FRANCHISE FEES**

7.1. *Communications Tax:* Cox shall comply with the provisions of Section 58.1-645 *et seq.* of the Code of Virginia, pertaining to the Virginia Communications Sales and Use Tax, as amended (the "Communications Tax"), and Section 7.2 of this Agreement shall not have any effect, for so long as the Communications Tax or a successor state or local tax that would constitute a franchise fee for purposes of 47 U.S.C. § 542, as amended, is imposed on the sale of cable services by Cox to subscribers in the County.

7.2. *Payment of Franchise Fee to County:* In the event that the Communications Tax is repealed and no successor state or local tax is enacted that would constitute a franchise fee for purposes of 47 U.S.C. § 542, as amended, and a franchise fee continues to be allowed pursuant to 47 U.S.C. § 542, Cox shall pay to the County a franchise fee of five percent (5%) of annual Gross Revenue, or such other greater amount as may then be allowed under federal law, beginning on the effective date of the repeal of



such tax (the “Repeal Date”). Beginning on the Repeal Date, the terms of Section 7.2 of this Agreement shall take effect. In accordance with Title VI of the Communications Act, the twelve (12) month period applicable under the Franchise for the computation of the franchise fee shall be a calendar year. Such payments shall be made no later than thirty (30) days following the end of each calendar quarter. Should Cox submit an incorrect amount, Cox shall be allowed to add or subtract that amount in a subsequent quarter, but no later than one hundred twenty (120) days following the close of the calendar year for which such amounts were applicable; such correction shall be documented in the supporting information required under Section 7.2.1.

7.2.1. *Supporting Information:* Within fifteen (15) days after submitting each franchise fee payment, Cox shall deliver to the County a brief report in the form of and containing the information required by Exhibit B, prepared by a representative of Cox, showing the basis for the computation. The County shall have the right to reasonably request further supporting information for each franchise fee payment.

7.2.2. *Limitation on Franchise Fee Actions:* The period of limitation for recovery of any franchise fee payable hereunder shall be three years from the date on which payment by Cox is due.

7.2.3. *Bundled Services:* If Cox bundles Cable Service with non-Cable Service, Cox agrees that it will not intentionally or unlawfully allocate such revenue for the purpose of evading the franchise fee payments under this Agreement. In the event that Cox or any Affiliate shall bundle, or combine Cable Services (which are subject to the franchise fee) with non-Cable Services (which are not subject to the franchise fee), so that subscribers pay a single fee for more than one class of service or receive a discount on Cable Services, a *pro rata* share of the revenue received for the bundled, or combined services shall, to the extent reasonable, and in a manner consistent with GAAP be allocated to gross revenues for purposes of computing the franchise fee. To the extent there are published charges and it is reasonable, the *pro rata* share shall be computed on the basis of the published charge for each of the bundled, tied, or combined services, when purchased separately. However, the parties agree that there may be exceptions such as equipment or tariffed telecommunications services that cannot be discounted under state or federal law or regulations are excluded from the bundled allocation obligations in this section.

7.3. *Payment of EG Access Capital Grant:* Cox shall provide with each payment of the EG Access Capital Grant information supporting its calculation of the EG Access Capital Grant payment, including both a statement of the number of subscribers for any applicable period, and documentation demonstrating the accuracy of the number of subscribers used in the computation. The County shall preserve the confidentiality of such information to the extent permitted by applicable law.

## **8. CUSTOMER SERVICE**

### **8.1. *Definitions:***

8.1.1. *Complaint:* Any written or verbal contact with Cox in connection with a subscription or Cox’s Cable System in which a person expresses dissatisfaction with an act, omission, product or service that is (1) within Cox’s control; and (2) requires a corrective measure on the part of Cox. Notwithstanding the foregoing, any contact from a Subscriber that is resolved in the course of a telephone

call so that Cox does not subsequently have to perform any corrective action shall not be deemed a “Complaint.”

8.1.2. *Respond*: Cox’s investigation of a Service Interruption by receiving a Subscriber call and opening a trouble ticket, if required.

8.1.3. *Service Call*: The action taken by Cox to correct a Service Interruption, or to perform other maintenance, repair, or adjustment requested by a Subscriber (but not including installation), the effect of which is limited to an individual Subscriber.

8.1.4. *Significant Outage*: A Significant Outage shall mean any loss of picture or sound on one or more Channels lasting at least four (4) continuous hours that affects at least one thousand (1,000) Subscribers in the County.

8.1.5. *Standard Installation*: Installations where the subscriber is within 250 feet of trunk or feeder lines.

## 8.2. *Telephone and Customer Convenience Availability:*

8.2.1. *Customer Convenience*: Cox shall maintain a website portal to allow Subscribers to request service, pay bills, exchange equipment, and conduct other business with Cox Customer Service Agents. Cox shall provide postage-paid mailers to Subscribers returning Cox equipment at no cost to the Subscriber. Cox shall maintain an office at a convenient location within the County or the Virginia peninsula of the Hampton Roads region, which shall be open during Normal Business Hours, to allow Subscribers to request service, pay bills, exchange equipment, and conduct other business.

8.2.2. *Telephone Inquiries*: Cox shall maintain a toll-free number to receive all calls and inquiries from Subscribers in the Franchise Area and residents regarding Cable Service. Cox representatives trained and qualified to answer questions related to Cable Service in the Franchise Area must be available to receive reports of Service Interruptions twenty-four (24) hours a day, seven (7) days a week, and other inquiries during Normal Business Hours. Cox representatives shall identify themselves by name when answering this number.

8.2.3. *Cox’s Telephone Number*: Cox’s toll-free telephone numbers shall appear on subscriber bills and Cox’s website.

### 8.2.4. *Telephone Answering Method:*

8.2.4.1. Cox may at its sole discretion use an Automated Response Unit (“ARU”) or a Voice Response Unit (“VRU”) to distribute calls. If a foreign language routing option is provided, and the Subscriber does not enter an option, the menu will default to the first tier menu of English options.

8.2.4.2. After the first tier menu (not including a foreign language rollout) has run through three times, if customers do not select any option, the ARU or VRU shall forward the

call to a queue for a live representative. Cox may reasonably substitute this requirement with another method of handling calls from customers who do not have touch-tone telephones.

8.2.5. *Telephone Answering Standards:* Under Normal Operating Conditions, calls received by Cox shall be answered within thirty (30) seconds. Cox shall meet this standard for ninety percent (90%) of the calls it receives at all call centers receiving calls from Subscribers, as measured on a quarterly basis. Measurement of this standard shall include all calls received by Cox at all call centers receiving calls from Subscribers, whether they are answered by a live representative, by an automated attendant, or abandoned after 30 seconds of call waiting. If a call needs to be transferred, transfer time shall not exceed thirty (30) seconds. This standard shall be met no less than ninety percent (90%) of the time under Normal Operating Conditions, measured on a quarterly basis.

8.2.6. *Busy Signals:* Under Normal Operating Conditions, callers to Cox shall receive a busy signal no more than three (3%) percent of the time during any calendar quarter, as measured on a quarterly basis.

8.3. *Installations and Service Appointments:*

8.3.1. *Compliance with Law:* All installations will be in accordance with applicable law, including but not limited to, appropriate grounding, connection of equipment to ensure reception of Cable Service, and the provision of required consumer information and literature to adequately inform the Subscriber in the utilization of Cox-supplied equipment and Cable Service.

8.3.2. *Standard Installations:* Standard Installations shall be performed within seven (7) business days after an order is placed. Under Normal Operating Conditions, Cox shall meet this standard for no less than ninety-five percent (95%) of the Standard Installations it performs, as measured on a calendar quarter basis.

8.3.3. *Time for Performing Service Calls:* Cox shall perform Service Calls, installations, and disconnects at least during Normal Business Hours. Cox shall not cancel a service or installation appointment after the close of business on the business day preceding the appointment. Cox will offer Subscribers “appointment window” alternatives for arrival to perform installations, Service Calls and other activities of a maximum four (4) hours scheduled time block during appropriate daylight available hours, usually beginning at 8:00 AM unless Cox deems it appropriate to begin earlier by location exception. At Cox’s discretion, Cox may offer Subscribers appointment arrival times other than these four (4) hour time blocks, if agreeable to the Subscriber. These hour restrictions do not apply to weekends. If at any time an installer or technician believes it impossible to make a scheduled appointment time, an attempt to contact the customer will be made prior to the end time of the appointment window and the appointment scheduled at a time convenient to the customer, if rescheduling is necessary. It is Cox’s burden to prove it met an appointment.

8.4. *Service Interruptions and Outages:*

8.4.1. *Notice of Unplanned Outage:* If Cox becomes aware of an unplanned Significant Outage, Cox shall notify the County promptly of the Significant Outage. The County shall provide Cox

with a single point of contact telephone number and email address to be used by Cox in notifying the County.

8.4.2. *Planned Outages:* Cox shall exercise commercially reasonable efforts to limit any planned Significant Outage necessary for the purpose of maintaining, repairing, or constructing the Cable System. Except in an emergency or other situation necessitating a more expedited or alternative notification procedure, Cox may schedule a planned Significant Outage for a period of more than four (4) hours during any twenty-four (24) hour period only after the County and each affected Subscriber have been given fifteen (15) days prior notice of the planned Significant Outage. Notwithstanding the foregoing, Cox may perform modifications, repairs and upgrades to the System without prior notification between 12.01 a.m. and 6 a.m., which may interrupt service.

8.4.3. *Ability to Respond:* Cox representatives who are capable of responding to Service Interruptions must be available to Respond twenty-four (24) hours a day, seven (7) days a week.

8.4.4. *Time for Response:* Under Normal Operating Conditions, Cox must Respond to a call from a Subscriber regarding a Service Interruption or other service problem within twenty-four (24) hours, including weekends, of receiving the Subscriber's call.

8.4.5. *Completion of Work:* Under Normal Operating Conditions, Cox shall use best efforts to complete Service Calls within seventy-two (72) hours of the time Cox commences to Respond to the Service Interruption or other request for a Service Call, not including situations where the Subscriber is not reasonably available for a Service Call.

8.4.6. *Performance Standard:* Cox shall meet the standard in Subsection 8.4.5 of this Section for ninety percent (90%) of the Service Calls it completes, as measured on a quarterly basis.

8.4.7. *Credit for Outage:* Under Normal Operating Conditions, if a Significant Outage affects all Cable Services for more than twenty-four (24) consecutive hours, Cox shall issue an automatic credit to the affected Subscribers in the amount equal to their monthly recurring charges for the proportionate time the Cable Service was out. If a Significant Outage occurs during a period when Normal Operating Conditions do not apply, Cox may exercise its own discretion in deciding whether to issue credits for the Significant Outage. Such credit shall be reflected on Subscriber billing statements within the next available billing cycle following the Significant Outage. Notwithstanding the foregoing, if Cox has issued an automatic credit to affected Subscribers but inadvertently fails to issue a credit to one or more Subscribers entitled to the credit, the County shall not find Cox to be in violation of this requirement if the number of Subscribers who did not receive the credit is *de minimis* and Cox offers the credit promptly upon being notified of the error.

8.5. *Customer Complaints:* Under Normal Operating Conditions, Cox shall (i) investigate Subscriber complaints referred by the County within five (5) days; (ii) resolve Subscriber complaints referred by the County within thirty (30) days; (iii) provide a response as to the complaint resolution to the Subscriber; and, (iv) provide notice to the County upon resolution of a referred complaint. Cox shall ensure that all such referred complaints are treated by the responsible Cox personnel as priority, until they are resolved. Cox shall notify the County of those matters that necessitate an excess of thirty (30) days to resolve. The County may require reasonable documentation to be provided by Cox to substantiate the

request for additional time to resolve the problem. For purposes of this Section, “resolve” means that Cox shall perform those actions, which, in the normal course of business, are necessary to investigate the Customer’s complaint and advise the Customer of the results of that investigation.

8.6. *Billing:*

8.6.1. *Content of Bills:* Subscriber bills must be itemized to describe Cable Services purchased by Subscribers and related equipment charges. Bills shall clearly delineate activity during the billing period, including optional charges, rebates, credits, and aggregate late charges. Cox shall, without limitation as to additional line items, be allowed to itemize as separate line items, Franchise fees, Franchise related costs, taxes and/or other governmentally imposed fees. Cox shall maintain records of the date and place of mailing of bills.

8.6.2. *Payment Due Date:* Every Subscriber with a current account balance sending payment directly to Cox shall be given at least twenty (20) days from the date statements are mailed to the Subscriber until the payment due date.

8.6.3. *Notice of Due Date:* A specific due date shall be listed on the bill of every Subscriber whose account is current. Delinquent accounts may receive a bill which lists the due date as upon receipt; however, the current portion of that bill shall not be considered past due except in accordance with Section 8.6.2 above.

8.6.4. *Billing Disputes:* Any Subscriber who, in good faith, disputes all or part of any bill shall have the option of withholding the disputed amount without disconnect or late fee being assessed until the dispute is resolved provided that:

8.6.4.1. The Subscriber pays all undisputed charges;

8.6.4.2. The Subscriber provides notification of the dispute to Cox in writing within five (5) days prior to the due date; and

8.6.4.3. The Subscriber cooperates in determining the accuracy and/or appropriateness of the charges in dispute.

8.6.4.4. It shall be within Cox's sole reasonable discretion to determine when the dispute has been resolved.

8.6.5. *Billing Complaints:* Under Normal Operating Conditions, Cox shall initiate investigation and resolution of all billing complaints received from Subscribers within five (5) business days of receipt of the complaint. Final resolution shall not be unreasonably delayed.

8.6.6. *Contact Information:* Cox shall provide a toll-free telephone number and address on the bill for Subscribers to contact Cox.

8.6.7. *Bill Inserts:* Cox shall forward a copy of any Cable Service related billing inserts or other mailing sent to Subscribers to the County upon written request.

8.6.8. *Method of Payment:* Cox shall provide all Subscribers with the option of paying for Cable Service by credit card, by check or by an automatic payment option where the amount of the bill

is automatically deducted from a checking account designated by the Subscriber. Based on credit history, at the option of Cox, the payment alternative may be limited.

8.7. *Deposits, Refunds and Credits:*

8.7.1. *Deposits:* Cox may require refundable deposits from Subscribers with a poor credit or poor payment history, who refuse to provide credit history information to Cox, or who rent Subscriber equipment from Cox, so long as such deposits are applied on a non-discriminatory basis and the amounts of such deposits are established in accordance with applicable law.

8.7.2. *Refunds and Credits:* Cox shall refund or credit the Subscriber for the amount of the deposit collected for equipment, which is unrelated to poor credit or poor payment history, after one year and provided the Subscriber has demonstrated good payment history during this period. Cox shall pay interest on other deposits if required by law.

8.7.3. *Timing of Refunds:* Under Normal Operating Conditions, refund checks will be issued within the next available billing cycle following the resolution of the event giving rise to the refund, (e.g. equipment return and final bill payment).

8.7.4. *Timing of Credits:* Credits for Cable Service will be issued no later than the Subscriber's next available billing cycle, following the determination that a credit is warranted, and the credit is approved and processed. Such approval and processing shall not be unreasonably delayed.

8.7.5. *Receipt of Payment:* Bills shall be considered paid when appropriate payment is received by Cox or its authorized agent. Appropriate time considerations shall be included in Cox's collection procedures in accordance with applicable law to assure that payments due have been received before late notices or termination notices are sent.

8.8. *Rates, Fees and Charges:*

8.8.1. *Late Fees:* Cox shall not, except to the extent permitted by law, impose any fee or charge for Service Calls to a Subscriber's premises to perform any repair or maintenance work related to Cox's plant or equipment necessary to receive Cable Service, except where such problem is caused by a negligent or wrongful act of the Subscriber (including, but not limited to a situation in which the Subscriber reconnects Cox equipment incorrectly), failure of Subscriber-owned equipment, or by the failure of the Subscriber to take reasonable precautions to protect Cox's equipment (for example, a dog chew).

8.8.2. *Notice of Late Fee:* Cox shall provide reasonable notice to Subscribers of the possible assessment of a late fee on bills or by separate notice.

8.9. *Disconnection / Denial of Service:*

8.9.1. *Disconnection:* Cox shall not terminate Cable Service for nonpayment of a delinquent account unless Cox mails a notice of the delinquency and impending termination prior to the proposed final termination. The notice shall be mailed to the Subscriber to whom the Cable Service is billed. The notice of delinquency and impending termination may be part of a billing statement.

8.9.2. *Restoration of Service:* Cable Service terminated in error must be restored without charge within twenty-four (24) hours of notice. If a Subscriber was billed for the period during which Cable Service was terminated in error, a credit shall be issued to the Subscriber if the Service Interruption was reported by the Subscriber.

8.9.3. *Denial of Service:* Nothing in these standards shall limit the right of Cox to deny Cable Service for non-payment of previously provided Cable Services, refusal to pay any required deposit, theft of Cable Service, damage to Cox's equipment, abusive and/or threatening behavior toward Cox's employees or representatives, or refusal to provide credit history information or refusal to allow Cox to validate the identity, credit history and credit worthiness via an external credit agency.

8.10. *Communications with Subscribers:*

8.10.1. *Identification of Cox Personnel:* All Cox personnel, contractors and subcontractors contacting Subscribers or potential Subscribers outside the office of Cox shall wear a clearly visible identification card bearing their name and photograph. Cox shall make reasonable effort to account for all identification cards at all times. In addition, all Cox representatives shall wear appropriate clothing while working at a Subscriber's premises. Every service vehicle of Cox and its contractors or subcontractors shall be clearly identified as such to the public. Specifically, Cox vehicles shall have Cox's logo plainly visible. The vehicles of those contractors and subcontractors working for Cox shall have the contractor's / subcontractor's name plus markings (such as a magnetic door sign) indicating they are under contract to Cox.

8.10.2. *Contacts with Subscribers:* All contact with a Subscriber or potential Subscriber by a Person representing Cox shall be conducted in a courteous manner.

8.10.3. *Notice of County's Role in Complaint Process:* Cox shall send annual notices to all Subscribers informing them that any complaints or inquiries not satisfactorily handled by Cox may be referred to the County.

8.10.4. *Form of Notice:* All notices identified in this Section shall be by either:

8.10.4.1. A separate document that is either mailed directly to the customer, included with a billing statement, or included on the portion of the monthly bill that is to be retained by the Subscriber; or

8.10.4.2. A separate electronic notification.

8.10.5. *Notice of Changes in Rates and Services:* Cox shall provide reasonable notice to Subscribers and the County of any pricing changes or additional charges (excluding sales discounts, new products or offers) and, subject to the foregoing, any significant changes in Cable Services, including channel line-ups. Such notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if within the control of Cox, and Cox shall provide a copy of the notice to the County including how and where the notice was given to Subscribers.

8.10.6. *Annual Notice to Subscribers:* In accordance with applicable law, Cox shall provide information to all Subscribers about each of the following items at the time of installation of Cable

Services, annually to all Subscribers, at any time upon request, and, subject to Section 8.10.5, at least thirty (30) days prior to making significant changes in the information required by this Section if within the control of Cox:

8.10.6.1. Products and Cable Service offered;

8.10.6.2. Prices and options for Cable Services and condition of subscription to Cable Services. Prices shall include those for Cable Service options, equipment rentals, program guides, installation, downgrades, late fees and other fees charged by Cox related to Cable Service;

8.10.6.3. Installation and maintenance policies including, when applicable, information regarding the Subscriber's in-home wiring rights during the period Cable Service is being provided;

8.10.6.4. Channel positions of Cable Services offered on the Cable System;

8.10.6.5. Complaint procedures, including the name, address and telephone number of the County, but with a notice advising the Subscriber to initially contact Cox about all complaints and questions;

8.10.6.6. Procedures for requesting Cable Service credit;

8.10.6.7. The availability of a parental control device;

8.10.6.8. Cox practices and procedures for protecting against invasion of privacy; and

8.10.6.9. The address and telephone number of Cox's office to which complaints may be reported.

Where reasonably possible Cox shall give the County advance copies of the notices required in this subsection prior to distribution to subscribers if the reason for notice is due to a change that is within the control of Cox and as soon as possible if not within the control of Cox.

8.10.7. *Content of Notice of Rate Changes:* Notices of changes in rates shall indicate the Cable Service new rates and old rates, if applicable.

8.10.8. *Channel Changes:* Notices of changes of Cable Services and/or Channel locations shall include a description of the new Cable Service, the specific channel location, and the hours of operation of the Cable Service if the Cable Service is only offered on a part-time basis. In addition, should the channel location, hours of operation, or existence of other Cable Services be affected by the introduction of a new Cable Service, such information must be included in the notice.

8.10.9. *Termination Notices:* Every notice of termination of Cable Service shall include the following information:

8.10.9.1. The name and address of the Subscriber whose account is delinquent;



8.10.9.2. The amount of the delinquency for all services billed;

8.10.9.3. The date by which payment is required in order to avoid termination of Cable Service; and

8.10.9.4. The toll-free telephone number for Cox where the Subscriber can receive additional information about their account and discuss the pending termination.

## 9. **REPORTS AND RECORDS**

9.1. *Open Books and Records:* Upon reasonable written notice to Cox, the County shall have the right to inspect and copy Cox's books and records pertaining to Cox's provision of Cable Service in the Franchise Area, as reasonably determined by the County necessary to ensure compliance with the terms of this Franchise. Such notice shall specifically reference the section or subsection of the Franchise which is under review, so that Cox may organize the necessary books and records for appropriate access by the County. Cox shall not be required to maintain any books and records for Franchise compliance purposes longer than five (5) years. Notwithstanding anything to the contrary set forth herein, Cox shall not be required to disclose any of its or an Affiliate's books and records not relating to the provision of Cable Service in the Franchise Area. Cox shall not be required to provide Subscriber information in violation of Section 631 of the Communications Act, 47 U.S.C. §551. Books and records shall be accorded confidential treatment to the extent provided by and in accordance with Section 9.4 hereof.

9.1.1. *Voluminous Materials.* Books and records shall be made available at Cox's office in the County during Normal Business Hours, or at such other reasonable time and place as the parties may agree, including electronic submission. If any books, records, maps or plans, or other requested documents are too voluminous, or for security reasons cannot be copied and moved, then Cox may request that any inspection take place at some other location, provided that (1) Cox shall make necessary arrangements for copying documents selected by the County after review; and (2) electronically transmitting said documents to the County. The parties agree that any payments made by Cox hereunder are not a franchise fee.

9.1.2. *Audit Provision:* The County shall have the right to conduct an audit or review of the books and records of Cox under the procedures specified in Section 9.1 of this Agreement for purposes of verifying and recomputing any amounts determined to be payable by Cox to the County under this Agreement, including, without limitation, the EG Capital Grant. Cox shall bear the County's reasonable expenses of any such audit or review performed by a qualified, independent third-party expert, up to a maximum of seven thousand five hundred dollars (\$7,500), if such audit or review discloses an underpayment by Cox of more than three percent (3%) of any quarterly payment and five thousand dollars (\$5,000) or more. The County shall not conduct such an audit or review of Cox more frequently than once every twenty-four (24) months. The County shall have no more than five (5) years from the time Cox delivers a payment to initiate an audit or review of that payment pursuant to this Section 9.1.2. In the event that Cox disputes any underpayment discovered as the result of an audit or review conducted by the County, the County shall work together with Cox in good faith to promptly resolve such dispute. The County and Cox maintain all rights and remedies available at law regarding any disputed amounts.

9.2. *Records Required:* Cox shall at all times maintain:

9.2.1. Records of unplanned Significant Outages for a period of four (4) years after occurrence, indicating date, duration, area, cause and the number of Subscribers affected;

9.2.2. Records of service calls for repair and maintenance for a period of four (4) years after resolution by Cox, indicating the date and time service was required, the date of acknowledgment and date and time service was scheduled (if it was scheduled), and the date and time service was provided, and (if different) the date and time the problem was resolved; and

9.2.3. Records of installation/reconnection and requests for service extension for a period of four (4) years after the request was fulfilled by Cox, indicating the date of request, date of acknowledgment, and the date and time service was extended.

9.3. *Maps:* Upon fifteen (15) days' written notice, Cox shall make updated, as-built design maps of the Cable System available for examination by the County at Cox's regional office, or at another mutually acceptable location. The Franchisee shall also provide the County with updated strand maps of the Cable System at the following times: (i) within thirty (30) days of the Effective Date; and (ii) annually, within thirty (30) days after written request from the County. Such strand maps shall be provided in a CAD (computer-aided design) or other electronic format approved by the County, such as ESRI or AutoCAD. Maps shall be accorded confidential treatment to the extent provided by and in accordance with Section 9.4 hereof.

9.4. *Proprietary and Confidential Information:* Notwithstanding anything to the contrary set forth herein, Franchisee shall not be required to disclose any of its or an Affiliate's books and records not relating to the provision of Cable Service in the Franchise Area. Except as otherwise required by applicable law, including without limitation the Virginia Freedom of Information Act, the County shall treat any information disclosed by Franchisee as confidential and only disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof. Franchisee shall not be required to provide Subscriber information in violation of Section 631 of the Communications Act, 47 U.S.C. §551.

9.5. *Annual Report:* Within ninety (90) days of the end of Franchisee's fiscal year, including the fiscal year in which the Franchise becomes effective, Franchisee shall file with County an annual report containing the following information regarding the System:

9.5.1. A financial statement verifying total Gross Revenues prepared in accordance with generally accepted accounting principles and certified by a financial officer of Franchisee.

9.5.2. A summary of the previous year's activities in the development of the System, including, but not limited to, services begun or discontinued during the reported year.

9.5.3. A current copy of the Subscriber service agreement.

9.5.4. Changes, if any, in the ownership structure provided previously to the County.

9.5.5. A summary of the Complaints received during the reported year, by category, and a discussion of any unresolved Complaints.

To the extent that such information is publicly available on the Franchisee's website or has been previously provided to the County, the Franchisee may satisfy the requirement by including in the report hyperlinks or other references identifying where that information may be found.

9.6. Quarterly Reports: Franchisee shall provide County with a written quarterly report evidencing Franchisee's compliance with the telephone answering standards found in Sections 8.2.5 and 8.2.6 of this Franchise. Such report shall be provided within thirty (30) days following the end of a given quarter. Franchisee shall be permitted to submit raw quarterly statistics for County specific Subscribers to comply with this reporting requirement. Franchisee reserves the right to revise such raw statistics at a later date to reflect periods when the system may not have been operating under Normal Operating Conditions.

9.7. Requested Reports: County and Franchisee mutually agree that Franchisee shall provide such other reasonable reports requested by County with respect to Franchisee's operations pursuant to this Franchise at the times and forms prescribed by the County.

## 10. INSURANCE AND INDEMNIFICATION

### 10.1. *Insurance*:

10.1.1. Cox shall maintain in full force and effect, at its own cost and expense, during the Franchise Term, the following insurance coverage:

10.1.1.1. Commercial General Liability Insurance in the amount of one million dollars (\$1,000,000) combined single limit for property damage and bodily injury. Such insurance shall cover the construction, operation and maintenance of the Cable System, and the conduct of Cox's Cable Service business in the County.

10.1.1.2. Automobile Liability Insurance in the amount of one million dollars (\$1,000,000) combined single limit for bodily injury and property damage coverage.

10.1.1.3. Workers' Compensation Insurance meeting all legal requirements of the Commonwealth of Virginia.

10.1.1.4. Employers' Liability Insurance in the following amounts: (A) Bodily Injury by Accident: one hundred thousand dollars (\$100,000); and (B) Bodily Injury by Disease: one hundred thousand dollars (\$100,000) employee limit; five hundred thousand dollars (\$500,000) policy limit.

10.1.2. The County shall be designated as additional insured under each of the insurance policies required in this Article 10 except Workers' Compensation and Employers' Liability Insurance.

10.1.3. Cox shall not cancel any required insurance policy without obtaining alternative insurance in conformance with this Agreement.

10.1.4. All policies shall be issued by companies qualified to write insurance in the Commonwealth of Virginia and which maintain throughout the policy term a general rating of A-VII and a financial size category of "A:X" as determined by AM Best Rating Company.

10.1.5. Cox shall deliver to the County Certificates of Insurance showing evidence of the required coverage within thirty (30) days after the Effective Date, and upon written request thereafter.

10.2. *Indemnification:*

10.2.1. Cox agrees to indemnify, save and hold harmless, and defend the County, its officers, agents, boards and employees, from and against any liability for damages or claims resulting from tangible property damage or bodily injury (including accidental death), to the extent caused by Cox's negligent construction, operation, or maintenance of its Cable System, provided that the County shall give Cox written notice of its obligation to indemnify the County within ten (10) days of receipt of a claim or action pursuant to this subsection. Notwithstanding the foregoing, Cox shall not indemnify the County, for any damages, liability or claims resulting from the willful misconduct or negligence of the County, its officers, agents, employees, attorneys, consultants, independent contractors or third parties or for any activity or function conducted by any Person other than Cox in connection with EG Access Channels or EAS, or the distribution of any Cable Service over the Cable System.

10.2.2. With respect to Cox's indemnity obligations set forth in Section 10.2.1, Cox shall provide the defense of any claims brought against the County by selecting counsel of Cox's choice to defend the claim, subject to the consent of the County, which shall not unreasonably be withheld. Nothing herein shall be deemed to prevent the County from cooperating with Cox and participating in the defense of any litigation by its own counsel at its own cost and expense, provided however, that after consultation with the County, Cox shall have the right to defend, settle or compromise any claim or action arising hereunder, and Cox shall have the authority to decide the appropriateness and the amount of any such settlement. In the event that the terms of any such proposed settlement includes the release of the County and the County does not consent to the terms of any such settlement or compromise, Cox shall not settle the claim or action but its obligation to indemnify the County shall in no event exceed the amount of such settlement.

10.2.3. The County shall be responsible for its own acts of willful misconduct or negligence, or breach of obligation committed by the County for which the County is legally responsible, subject to any and all defenses and limitations of liability provided by law. Cox shall not be required to indemnify the County for acts of the County which constitute willful misconduct or negligence on the part of the County, its officers, employees, agents, attorneys, consultants, independent contractors or third parties.

**11. TRANSFER OF FRANCHISE**

11.1. *Approval Required.* No Transfer of the Franchise shall occur without the prior consent of the Board of Supervisors, provided that such consent shall not be unreasonably withheld, delayed or conditioned. No application for the approval of a Transfer shall be approved by the Board unless the transferee agrees in writing that it will abide by and accept all terms of this agreement, and that it will

assume the obligations, liabilities and responsibility for all acts and omissions, known and unknown, of the incumbent Cox under this agreement, for all purposes, including renewal, unless the Board, in its discretion, expressly waives all or part of this requirement.

11.2. *No Consent Required.* No such consent shall be required, however, for the following:

11.2.1. A transfer in trust, by mortgage, by other hypothecation, by assignment of any rights, title, or interest of Cox in the Franchise or Cable System in order to secure indebtedness; or

11.2.2. Transfer of an ownership or other interest in Cox to the parent of Cox or to another Affiliate of Cox; transfer of an interest in the Franchise or the rights held by Cox under the Franchise to the parent of Cox or to another Affiliate of Cox; any action which is the result of a merger of the parent of Cox; or any action which is the result of a merger of another Affiliate of Cox.

11.3. *Preservation of County's Rights.* In the case of any Transfer, regardless of whether consent of the Board of Supervisors is required, the transferee shall assume the obligations, liabilities and responsibility for all acts and omissions, known and unknown, of the incumbent Cox under this agreement, for all purposes, including renewal, and agree to be bound by the terms of this Franchise.

11.4. *Approval does not constitute waiver of rights.* Approval by the Board of a Transfer, or consummation of a Transfer permitted by Section 11.2, does not constitute a waiver or release of any of the rights of the Board under this agreement against the transferor franchisee, whether arising before or after the date of the Transfer.

## 12. **RENEWAL OF FRANCHISE**

12.1. *Federal Law:* The County and Cox agree that any proceedings undertaken by the County that relate to the renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the Communications Act, 47 U.S.C. § 546.

12.2. *Needs Assessment:* The County agrees that if the County issues a request for a proposal under 47 U.S.C. § 546(b), the County shall provide Cox with copies of any assessments of future cable-related needs and interests or the past performance of Cox that were relied upon by the County in preparing the request for proposal.

12.3. *Informal Renewal:* Notwithstanding anything to the contrary set forth herein, Cox and the County agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment, the County and Cox may agree to undertake and finalize informal negotiations regarding renewal of the then current Franchise and the County may grant a renewal thereof.

12.4. *Consistent with Law:* Cox and the County consider the terms set forth in this Article 12 to be consistent with the express provisions of 47 U.S.C. § 546 and Virginia Code Section 15.2-2108.30.

13. **ENFORCEMENT AND TERMINATION OF FRANCHISE**

13.1. *Notice of Violation:* If at any time the County believes that Cox has not complied with the terms of the Franchise, the County shall make a good faith effort to informally discuss the matter with Cox.

13.2. *Cox's Right to Cure or Respond:* Before seeking enforcement of the Franchise, the County shall notify Cox in writing of the nature of the alleged noncompliance (the "Noncompliance Notice"). Cox shall have twenty (20) business days from receipt of the Noncompliance Notice to: (i) respond to the County, if Cox contests (in whole or in part) the assertion of noncompliance; (ii) cure such noncompliance; or (iii) in the event that, by its nature, such noncompliance cannot be cured within such twenty (20) day period, initiate reasonable steps to remedy such noncompliance and notify the County of the steps being taken and the date by which cure is projected to be completed. Upon cure of any noncompliance, County shall provide written confirmation that such cure has been effected. The foregoing 20-day cure period shall not apply to customer service obligations measured on a quarterly basis ("Quarterly Standards"), which shall be governed by Section 13.3.

13.3. *Quarterly Standards:* As provided in Section 9.6, the Franchisee shall provide the County a written report demonstrating the Franchisee's level of compliance with each of the Quarterly Standards. If the Franchisee fails to meet any Quarterly Standard in a calendar quarter, the County shall have the right to begin the process of assessing liquidated damages pursuant to Section 13.4.4 by sending a Noncompliance Notice notifying the Franchisee that the Franchisee failed to comply with the Quarterly Standard in question, in order to inform the Franchisee that the Franchisee is not in compliance with such Quarterly Standard. Receipt of the Noncompliance Notice shall be deemed opportunity to cure. Upon submitting any report to the County that demonstrates that the Franchisee has not complied with a Quarterly Standard, or within fifteen (15) days after receipt of a Noncompliance Notice, the Franchisee may submit information to the County describing any extenuating circumstances related to any such noncompliance, and may request that the County waive liquidated damages, as provided in Section 13.6. If the Franchisee fails to meet the same Quarterly Standard in the immediately succeeding calendar quarter, the County shall have the right to assess liquidated damages pursuant to Section 13.4.4 by sending a Notice of Assessment in accordance with Section 13.8.

13.4. *Enforcement:* Subject to applicable federal and state law and the terms and conditions of this Agreement, including Section 13.3, the County may apply one of the following remedies if the County determines that Cox is in default of any provision of this Franchise:

13.4.1. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or

13.4.2. Commence an action at law for monetary damages or seek other equitable relief;  
or

13.4.3. In the case of a default of a material provision of the Franchise, seek to revoke the Franchise in accordance with Section 13.10; or

13.4.4. Assess and collect liquidated damages as set forth in Section 13.5 of this Agreement; or

13.4.5. Apply any other remedy provided for in this Agreement or applicable federal, state or local laws.

13.5. *Liquidated Damages:* Because Cox's failure to comply with provisions of this Franchise may result in injury to the County, because it may be difficult to quantify the extent of such injury, and in full satisfaction for the term of this Agreement of the obligations set forth in this Agreement, the County and Cox agree that, subject to the procedures in Section 13.8, liquidated damages as set forth herein may be assessable against Cox for certain violations of provisions of this Franchise. On an annual basis from the Effective Date of this Franchise, liquidated damages in total will not exceed ten thousand dollars (\$10,000). Cox hereby waives any defense as to the validity of any liquidated damages stated in this Franchise Agreement on the grounds that such liquidated damages are void as penalties or are not reasonably related to actual damages. The liquidated damages shall not apply when caused by Force Majeure events and shall only apply from the date of the Notice of Assessment as provided for in Section 13.8.

13.5.1. Failure to materially comply with reporting requirements set forth in Section 9 of this Agreement: Two hundred dollars (\$200) per day for each day the violation continues.

13.5.2. Failure to materially comply with requirements related to (i) the technical quality and reliability of the Access Channels, including without limitation downstream signal quality and reliability of Access Channels fiber transport, and (ii) provision of channel capacity for use as Access Channels: Two hundred fifty dollars (\$250) for each violation for each day the violation continues.

13.5.3. Failure to materially comply with Customer Service Standards set forth in Section 8 of this Agreement, other than Quarterly Standards: One hundred dollars (\$100) for the first violation; two hundred fifty dollars (\$250) for any violation within 12 months after the first violation; and five hundred dollars (\$500) for any violation within 12 months after the second or any subsequent violation. Liquidated damages shall not be paid where the Subscriber is otherwise compensated by Franchisee for the alleged non-compliance.

13.5.4. For violation of a Quarterly Standard: One thousand five hundred dollars (\$1500);

13.5.5. For violation of applicable FCC technical standards: Two hundred fifty dollars (\$250) per day for each for each day the violation continues;

13.5.6. For failure to file, obtain, maintain or replenish the letter of credit in a timely fashion: two hundred fifty dollars (\$250) per day for each day the violation continues; and

13.5.7. For any other material violation of this Agreement for which actual damages may not be ascertainable: Two hundred dollars (\$200) per day for each violation for each day the violation continues.

13.6. *Waiver:* The County may reduce or waive any of the above-listed liquidated damages if the County determines that such waiver is in the best interests of the County.

13.7. *Single Violation:* For purposes of any liquidated damages assessments, all similar violations or failures from the same factual events affecting multiple Subscribers shall be assessed as a

single violation, and a violation or a failure may only be assessed under any single one of the above-referenced categories.

13.8. *Assessment of Liquidated Damages:* In order to assess the liquidated damages set forth herein, the County, following provision to Cox of a written Noncompliance Notice as set forth in Section 13.2 or Section 13.3, and the expiration of applicable cure periods, shall issue to Cox, by certified mail or other comparable means, a notice of intention to assess liquidated damages (“Notice of Assessment”). The Notice of Assessment shall set forth the basis of the assessment, and shall inform Cox that liquidated damages will be assessed from the date of the notice. Unless the County indicates to the contrary, or the violation is for a Quarterly Standard, liquidated damages shall be assessed beginning with the date on which the County sent the Notice of Assessment and continuing thereafter until such time as the violation ceases as determined by the County. Payment by Cox of any assessment of liquidated damages shall be due thirty (30) days after the date of the Notice of Assessment. If Cox objects to the Notice of Assessment, Cox shall have the right to challenge the assessment in the Circuit Court for Gloucester County, or the United States District Court for the Eastern District of Virginia, and in no other courts, in which case the assessment will be stayed until the issue is decided by such court, or the parties resolve the matter in some other fashion. If Cox does not, within the thirty-day period, make full payment or challenge the assessment in court, the County may withdraw from Cox’s Letter of Credit the amount due. The County may make one or more withdrawals from the Letter of Credit during and after any period in which a violation remains uncured, provided that the total withdrawn does not exceed the amount due for the period between the date of the Notice of Assessment and the date on which the violation is deemed cured by the County.

13.9. *Letter of Credit:*

13.9.1. Cox shall obtain within thirty (30) days of executing this Agreement, and maintain thereafter throughout the Agreement term, an irrevocable letter of credit in favor of the County in the amount of fifty thousand dollars (\$50,000) (the “Letter of Credit”) from a federally insured lending institution licensed to do business in Virginia (“Lending Institution”). The Letter of Credit shall be in a form substantially the same as the form attached hereto as Exhibit C and that is acceptable to the County. The Letter of Credit shall be used to ensure Cox’s compliance with the material terms and conditions of this Agreement.

13.9.2. Cox shall file with the County a complete copy of the Letter of Credit (including all terms and conditions applying to the letter of credit), and keep such copy current with respect to any changes over the term of the Agreement.

13.9.3. If the County notifies Cox of any amounts due to the County pursuant to this Agreement or applicable law, including, without limitation, liquidated damages assessed pursuant to Section 13.5, and the EG Capital Grant provided for in Section 5.4, and Cox does not make such payment within thirty (30) days, the County may draw upon the Letter of Credit by presentation of a draft at sight drawn on the Lending Institution, accompanied by a written certificate signed by the County Administrator certifying that Cox has failed to comply with this Agreement and stating the specific reason therefor and the basis for the amount being withdrawn.

13.9.4. In the event the Lending Institution serves notice to the County that it elects not to renew the Letter of Credit, Cox shall provide a substitute Letter of Credit, in substantially the same form as that attached hereto as Exhibit C, from a Lending Institution approved by the County, before the effective Letter of Credit expires.



13.9.5. No later than thirty (30) days after mailing of notification to Cox by certified mail, return receipt requested, of a withdrawal under the Letter of Credit, Cox shall restore the amount of the Letter of Credit to the total amount specified herein, unless Cox has disputed the basis for the original withdrawal, in which case the obligation to restore shall be suspended until a final non-appealable decision on the dispute has been issued by a court of competent jurisdiction authority as provided in Section 13.8.

13.9.6. The rights reserved to the County with respect to the Letter of Credit are in addition to all other rights of the County, whether reserved by this Agreement or otherwise authorized by law, and no action, proceeding or right with respect to the Letter of Credit shall affect any other right the County has or may have.

13.9.7. No recovery by the County of any sum by reason of the Letter of Credit required in Section 13.9.1 of this Agreement shall be any limitation upon the liability of Cox to the County under the terms of this Agreement, except that any sums so received by the County shall be deducted from any recovery which the County shall establish against Cox under the terms of this Agreement.

13.10. *Revocation:* Should the County seek to revoke this Franchise after following the procedures set forth above in Section 13.2 or Section 13.3 of this Article, the County shall give written notice to Cox of such intent. The notice shall set forth the specific nature of the noncompliance. Cox shall have ninety (90) days from receipt of such notice to object in writing and to state its reasons for such objection. In the event the County has not received a satisfactory response from Cox, it may then seek termination of the Franchise at a public hearing before the Board of Supervisors. The County shall provide Cox, at least ninety (90) days written notice of such public hearing, specifying the time and place of such hearing and stating its intent to revoke the Franchise.

13.10.1. At the designated hearing, Cox shall be provided a fair opportunity for full participation in accordance with applicable law, including the right to be represented by legal counsel.

13.10.2. In making any decision to revoke the Franchise, the County shall apply the standards provided by applicable law. Cox shall have the right to appeal any revocation in the Circuit Court for Gloucester County, or the United States District Court for the Eastern District of Virginia, and no other courts.

13.10.3. The County may, at its sole discretion, take any lawful action which it deems appropriate to enforce the County's rights under the Franchise in lieu of revocation of the Franchise. The County may also, in lieu of revocation, grant additional time to Cox to effect a cure of any default.

#### 14. **MISCELLANEOUS PROVISIONS**

14.1. *Actions of Parties:* In any action by the County or Cox that is mandated or permitted under the terms hereof, such party shall act in a reasonable and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall be provided in good faith and not withheld, delayed or conditioned in a manner inconsistent with applicable law.

14.2. *Binding Acceptance:* This Agreement shall bind and benefit the parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, trustees, successors and assigns, and the promises and obligations herein shall survive the expiration date hereof.

14.3. *Preemption*: In the event that federal or state law, rules, or regulations preempt a provision or limit the enforceability of a provision of this Agreement, the provision shall be read to be preempted to the extent, and for the time, but only to the extent and for the time, required by law. In the event such federal or state law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the County.

14.4. *Force Majeure*: Cox 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 a Force Majeure.

14.5. *Notices*: Unless otherwise expressly stated herein, notices required under the Franchise shall be mailed first class, postage prepaid, or sent via recognized national overnight courier service to the addressees below. Notwithstanding the foregoing, notices required by Sections 8.5, 8.10.5, 8.10.6, or 8.10.8 may be sent via electronic mail. Each party may change its designee by providing written notice to the other party.

14.5.1. Notices to Cox shall be mailed to:

Region Manager  
Cox Communications Hampton Roads, LLC  
1341 Crossways Boulevard  
Chesapeake, VA 23320

with a copy to:

Cox Communications  
Attn: Vice President of Government Affairs  
6205B Peachtree Dunwoody Road  
Atlanta, GA 30328

and

Government & Regulatory Affairs  
Cox Communications Virginia  
1341 Crossways Boulevard  
Chesapeake, VA 23320

14.5.2. Notices to the County shall be mailed to:

County Administrator  
6489 Main Street  
Gloucester, VA 23061

with a copy to:

County Attorney  
P.O 1309  
Gloucester, VA 23061

14.6. *Entire Agreement*: This Franchise and the Exhibits hereto constitute the entire agreement between Cox and the County, and it supersedes all prior or contemporaneous agreements, representations or understanding (whether written or oral) of the parties regarding the subject matter hereof. Any ordinances or parts of ordinances that conflict with the provisions of this Agreement are superseded by this Agreement.

14.7. *Amendments*: Amendments to this Franchise shall be mutually agreed to in writing by the parties.

14.8. *Captions*: The captions and headings of articles and sections throughout this Agreement are intended solely to facilitate reading and reference to the sections and provisions of this Agreement. Such captions shall not affect the meaning or interpretation of this Agreement.

14.9. *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.

14.10. *Recitals*: The recitals set forth in this Agreement are incorporated into the body of this Agreement as if they had been originally set forth herein.

14.11. *Independent Review*: The County and Cox each acknowledge that they have received independent legal advice in entering into this Agreement.

14.12. *No Third Party Beneficiary*: Nothing in this Agreement is intended to confer third-party beneficiary status on any member of the public, Person or private entity not a party to this Franchise Agreement and any such member of the public, Person or private entity shall not have third party status hereunder to enforce the terms of this Franchise.

14.13. *Employment Discrimination Prohibited*: During the performance of this Agreement, Cox agrees as follows:

14.13.1. Cox will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by federal or state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of Cox. Cox agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

14.13.2. Cox, in all solicitations or advertisements for employees placed by or on behalf of Cox, will state that Cox is an equal opportunity employer.

14.13.3. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

14.13.4. Cox will include the provisions of the foregoing paragraphs 14.13.1, 14.13.2, and 14.13.3 in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

14.14. *Drug-Free Workplace To Be Maintained by Cox:* During the performance of this Agreement, Cox agrees to (i) provide a drug-free workplace for Cox's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in Cox's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of Cox that Cox maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor. For the purposes of this section, “*drug-free workplace*” means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Agreement.

14.15. *Compliance with Laws Regarding Employment of Aliens:* Cox agrees that it does not and shall not during the performance of the contract for goods and services knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986

14.16. *Federal Requirement:* This agreement may be subject to federal oversight. Cox, as applicable, will comply with 2 CFR 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) Part 317-326 (Procurement Standards) and Section 2 CFR 200.404 (Cost Reasonableness).

**[SIGNATURE PAGE FOLLOWS]**

AGREED TO THIS \_\_\_ DAY OF \_\_\_\_, 2021.

**County of Gloucester, Virginia**

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

County Administrator

Approved as to Form:

\_\_\_\_\_  
County Attorney, County of Gloucester

**COX COMMUNICATIONS HAMPTON ROADS, LLC**

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

Its: \_\_\_\_\_

**EXHIBITS**

- Exhibit A: Public Facilities
- Exhibit B: Franchise Fee Payment Report
- Exhibit C: Letter of Credit Form

FOR DISCUSSION PURPOSES ONLY

## EXHIBIT A

### PUBLIC FACILITIES

Gloucester County Jail	7502 Justice Dr
Gloucester County Library	6920 Main St
Gloucester County	7478 Justice Dr
Gps - Petsworth Es	10658 George Washington Mem Hwy
Gps -Tc Walker Es - Franchise	6099 T C Walker Rd
Gps - Facilities & Technology	6097 T C Walker Rd
Gloucester Co-9th District Court	7400 Justice Dr
Gloucester Volunteer Fire	7598 Dutton Rd
Gloucester County Administrator	6467 Main St
New Page Middle School	5198 T C Walker Rd
County Of Gloucester Franchise V	6489 Main St
County Of Gloucester Franchise V	6504 Main St
Gloucester County Ecc	7478 Justice Dr
Gloucester Fire Dept	6595 Main St
Gloucester Library	6382 Main St
Gloucester Volunteer Fire #6	7070 Ark Rd
Gloucester County Build & Ground	7385 Justice Dr
Gloucester High School	6680 Short Ln
Gloucester Social Services	6641 Short Ln
Bethel School	2991 Hickory Fork Rd
Gloucester Senior Center	6650 Main St

**EXHIBIT B**

**FRANCHISE FEE PAYMENT REPORT FORMAT**

Gloucester County  
FRANCHISE FEE CALCULATION  
Quarter Ended: XX/XX/XXXX

County Administrator  
6489 Main Street  
Gloucester, VA 23061

Basic	_____
Pay	_____
Digital	_____
PPV & VOD	_____
Equipment	_____
Installation	_____
Net Ad Sales	_____
Shopping	_____
Other	_____
Total Revenue	_____
Bad Debt/Write Offs	_____
Total Franchise Fee Base	_____
Franchise Fee Percentage	_____
Total Payment Due	_____
Basic Subscribers	_____

To the best of my knowledge and belief, the above information of the ledgers and records of Cox Communications Hampton Roads, LLC, is true and factual.

Regulatory Compliance Manager  
Northeast Division

## EXHIBIT C

### SAMPLE IRREVOCABLE STANDBY LETTER OF CREDIT

JP Morgan Chase Bank, N.A.  
Global Trade Services

**Issue Date:**

**L/C No.:**

**Amount: USD10,000 (Ten Thousand and 00/100 United States Dollars)**

Beneficiary: County of Gloucester  
County Administrator  
6489 Main Street  
Gloucester, Virginia 22553

Applicant: Cox Communications  
ATTN: Law & Policy  
6205B Peachtree-Dunwoody Road  
Atlanta, GA 30328

**TO:** County of Gloucester

We hereby establish this irrevocable standby Letter of Credit No. \_\_\_\_\_ in your favor, for an aggregate amount not to exceed the amount indicated above, expiring at JPMorgan Chase Bank, N.A. Tampa, Florida, at our close of business on \_\_\_\_\_.

This Letter of Credit is available with JPMorgan Chase Bank, N.A., by payment, against presentation of your draft, payable at sight drawn on JPMorgan Chase Bank, N.A. when accompanied by Beneficiary's dated statement purportedly signed by one of its officials reading as follows:

"The amount of this drawing USD10,000.00, under JPMorgan Chase Bank, N.A. Letter of Credit No. \_\_\_\_\_ represents funds due us as CoxCom, LLC, d/b/a Cox Communications Northern Virginia has failed to perform its duties pursuant to the Cable Franchise Agreement Between the County of Gloucester, and CoxCom, LLC, d/b/a Cox Communications Northern Virginia, dated \_\_\_\_\_, 2021."

This Irrevocable Letter of Credit shall be automatically extended without amendment for additional one year periods from the present or each future expiration date, unless at least 30 days prior to such date, we send you notice in writing by overnight carrier or hand delivery at the above address that we elect not to extend this Letter of Credit for such additional period.



Upon such notice of non-extension to you, you may draw drafts on us at sight for an amount not to exceed the balance remaining in this Letter of Credit within the then applicable expiry date, accompanied by your dated statement purportedly signed by one of your officials reading as follows:

“The amount of this drawing USD10,000.00 under JPMorgan Chase Bank, N.A. Letter of Credit number \_\_\_\_\_ represents funds due us as we have received notice from JPMorgan Chase Bank, N.A. of their decision not to extend Letter of Credit Number \_\_\_\_\_ for an additional year.”

All correspondence hereunder is to be directed to JPMorgan Chase Bank, N.A., c/o JPMorgan Treasury Services, Standby Letter of Credit Dept., 4<sup>th</sup> FL, 10420 Highland Manor Drive, Tampa, Florida 33610. DEMAND(S) FOR PAYMENT MAY ALSO BE MADE BY FACSIMILE TRANSMISSION TO \_\_\_\_\_ OR SUCH OTHER FAX NUMBER AS JPMORGAN CHASE BANK N.A. MAY IDENTIFY IN A WRITTEN NOTICE TO YOU. TO THE EXTENT PRESENTATION IS MADE BY FACSIMILE TRANSMISSION YOU MUST PROVIDE TELEPHONE NOTIFICATION THEREOF TO JPMORGAN CHASE BANK N.A. AT TELEPHONE NUMBER: (800) 634-1969 OPTION 1 OR (813) 432-6339 PRIOR TO OR SIMULTANEOUSLY WITH THE SENDING OF SUCH FACSIMILE TRANSMISSION. HOWEVER, THE ABSENCE OF SUCH TELEPHONE CONFIRMATION AS DESCRIBED ABOVE DOES NOT AFFECT OUR OBLIGATION TO HONOR SUCH DRAWING, IF SUCH DRAWING IS OTHERWISE IN COMPLIANCE WITH THE TERMS AND CONDITIONS OF THIS STANDBY LETTER OF CREDIT. IF DEMAND FOR PAYMENT IS MADE BY FAX, PRESENTATION OF ORIGINAL DOCUMENTS IS NOT REQUIRED.

We hereby agree with you that drafts drawn under and in compliance with the terms and conditions of this Letter of Credit will be duly honored.

This Letter of Credit shall be subject to the International Standby Practices (ISP98), International Chamber of Commerce Publication No. 590 and shall be governed and construed in accordance with the laws of the Commonwealth of Virginia, without regard to principles of conflict of laws. In the event of any dispute between ISP98 and the laws of the Commonwealth of Virginia, the laws of the Commonwealth of Virginia will control.

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Authorized Signature (Bank)