

**CABLE FRANCHISE AGREEMENT**

**BETWEEN**

**CITY OF ALLENTOWN**

**AND**

**SERVICE ELECTRIC CABLE TV, INC.**

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## **CABLE FRANCHISE AGREEMENT**

This Cable Franchise Agreement (hereinafter referred to as the “Agreement”) is executed as of the \_\_\_\_ day of \_\_\_\_\_, 2018 (hereinafter referred to as the “Effective Date”) by and between the City of Allentown, a municipality located in Lehigh County, Pennsylvania (hereinafter referred to as the “City”) and Service Electric Cable TV, Inc. (hereinafter referred to as “Service Electric”).

**WHEREAS**, pursuant to Title VI of the Cable Act, the regulations of the Federal Communications Commission (hereinafter referred to as the “FCC”) and Pennsylvania law, the City is authorized to grant and renew franchises to construct, operate and maintain a Cable System utilizing Public Rights-of-Way and properties within the City’s jurisdiction; and

**WHEREAS**, Service Electric currently holds a cable franchise from the City by virtue of an ordinance originally granting a cable franchise to Service Electric or a predecessor entity; and

**WHEREAS**, Service Electric has requested that the City renew Service Electric’s franchise to maintain, construct, operate, and maintain its Cable System over, under and along the aforesaid rights-of-ways for use by the City’s residents; and

**WHEREAS**, the aforesaid Public Rights-of-Way used by Service Electric are public properties acquired and maintained by the City on behalf of the citizens of the City, and the right to use said rights-of-way is a valuable property right; and

**WHEREAS**, the City desires to protect and manage the aforesaid rights-of-way, establish standards of Subscriber service, maintain a technologically advanced Cable System, receive Franchise Fees for Service Electric’s use of the City’s rights-of-ways as provided by federal law, obtain the use of an educational and governmental channel, establish certain reporting requirements, obtain certain complimentary services, provide legal protections for the City, and meet the current and future cable-related needs of its residents; and

**WHEREAS**, the City held a public hearing on the subject of cable franchise renewal, including reviewing the cable operator’s past performance and identifying the City’s future cable-related community needs; and

**WHEREAS**, the City has determined that this Agreement and the process for consideration of this Agreement complies with all applicable federal, state and local laws and regulations; and

**WHEREAS**, the City, after affording the public notice and opportunity for comment, has determined that the public interest would be served by renewing Service Electric’s franchise according to the terms and conditions contained herein;

**NOW THEREFORE**, in consideration of the mutual promises contained herein and intending to be legally bound hereby, the City and Service Electric agree as follows:

## **SECTION 1** **DEFINITIONS**

The following terms used in this franchise shall have the following meanings:

(a) Affiliated Entity - Any corporation, partnership or other business entity that owns or controls, is owned or controlled by, or is under common ownership or control with Service Electric.

(b) Basic Service - The service tier that includes at least the retransmission of local broadcast television signals and any Educational and Governmental (“EG”) access channel.

(c) Cable Act - Title VI of the Communications Act of 1934, as amended by the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competitive Act of 1992 and the Telecommunications Act of 1996, as it may, from time to time, be further amended.

(d) Cable Service - The one-way transmission to Subscribers of video programming or other programming service and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

(e) Cable System - A 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 City but such term does not include (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves Subscribers without using any public right-of-way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act, except that such facility shall be considered a Cable System (other than for purposes of Section 621 of the Cable Act) to the extent that facility is used in the transmission of video programming directly to Subscribers unless the extent of that use is solely to provide interactive on-demand services; (4) an open video system that complies with Section 653 of the Cable Act; (5) any facilities of any electric utility used solely for operating its electric utility systems; or (6) any equipment or facilities used to transmit wireless video, telecommunications, or broadband service.

(f) Channel - A portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel as a television channel is defined by FCC regulation.

(g) Complaint - Any written (including electronic) or oral communication by a Subscriber expressing dissatisfaction with any aspect of Service Electric’s business or the operation of its Cable System.

(h) Communications Act - The federal Communications Act of 1934, as amended, and as it may, from time to time, be further amended.

(i) Drop - The coaxial or fiber optic or other cable that connects a home or building to the Cable System.

(j) Educational and Governmental (EG) Channel - An access channel that consists of local educational and/or governmental programming.

(k) Emergency - A condition that either (1) constitutes a clear and immediate danger to the health, welfare, or safety of the public; or (2) has caused or is likely to cause the Cable system in the Public Rights-of-Way to be unusable and result in loss of the services provided.

(l) FCC - Federal Communications Commission.

(m) Force Majeure - Acts of God; acts of public enemies, including terrorist attacks; orders of any kind of the government of the United States of America or the Commonwealth of Pennsylvania or any of their departments, agencies, political subdivisions, or officials, or any civil or military authority; delays caused by public utilities; insurrections; riots; labor strikes; epidemics; landslides; lightning; earthquakes; fires; hurricanes; volcanic activity; storms; floods; washouts; droughts; explosions; unavailability of materials or equipment.

(n) Franchise - The right granted by the City to construct, operate and maintain a Cable System within the corporate limits of the City as embodied in the terms and conditions of this Agreement.

(o) Franchise Fee - The fee that Service Electric remits to the City for the use of the City's Public Rights-of-Way pursuant to Section 622 of the Cable Act, 47 U.S.C. §542, and Section 6.1 of this Agreement.

(p) Gross Revenues - All revenue received directly or indirectly by Service Electric or its Affiliated Entities arising from, attributable to, or in any way derived from the operation of Service Electric's Cable System in the City to provide Cable Services. Gross Revenues shall include, but are not limited to, the following:

- (1) Basic Service fees;
- (2) fees charged to Subscribers for any service tier other than Basic Service;
- (3) fees charged for premium services;
- (4) fees for all digital video tiers;
- (5) fees for video-on-demand;
- (6) fees charged to Subscribers for any optional, per-channel or per-program services;
- (7) revenue from the provision of any other Cable Services;
- (8) charges for installation, additional outlets, relocation, disconnection, reconnection and change-in-service fees for video or audio programming;
- (9) fees for changing any level of Cable Service programming;
- (10) fees for service calls;
- (11) inside wire maintenance fees if charged;

- (12) service plan protection fees if charged;
- (13) convenience fees if charged;
- (14) early termination fees if charged;
- (15) fees for Leased Access Channels;
- (16) charges based on the sale or lease of any portion of the Cable System for Cable Service;
- (17) rental or sales of any and all equipment, including converters and remote control devices;
- (18) any and all locally-derived advertising revenues;
- (19) revenues or commissions from locally-derived home shopping channels;
- (20) revenue from interactive television services;
- (21) fees for any and all music services;
- (22) broadcast retransmission fees;
- (23) late payment fees;
- (24) billing and collection fees if charged; and
- (25) NSF check charges if charged.

Gross Revenues shall not include bad debts, investment income, refunded deposits, or any taxes on services furnished by Service Electric and imposed directly upon any Subscriber or user by the City, state, federal or other governmental unit. In the event of any dispute over the classification of revenue, the City and Service Electric agree that reference should be made to generally accepted accounting principles ("GAAP") as promulgated and defined by the Financial Accounting Standards Board ("FASB").

(q) HD - High definition format.

(r) Leased Access or Commercial Access Channel - Any channel on Service Electric's Cable System designated for use by any entity that is unaffiliated with Service Electric pursuant to Section 612 of the Cable Act, 47 U.S.C. §532.

(s) Multiple Dwelling Units or MDU's - Any building, buildings or area occupied by dwelling units, appurtenances thereto, grounds and facilities, which dwelling units are intended or designed to be owned, occupied or leased for occupation, or actually occupied, as individual homes or residences for three (3) or more households.

(t) Normal Business Hours - Those hours during which most similar businesses in the community are open to serve Subscribers. In all cases, "Normal Business Hours" must include some evening hours at least one night per week and/or some weekend hours.

(u) Normal Operating Conditions - Business conditions within Service Electric's service department which are within the control of Service Electric. Those conditions that are not within the control of Service Electric include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages and severe or unusual weather conditions.

(v) Outlet - An interior receptacle that connects a television set to the Cable System.



(w) Public Rights-of-Way - The surface and the area across, in, over, along, under and upon the public streets, roads, lanes, avenues, alleys, sidewalks, bridges, highways and other rights-of-way, as the same now or may thereafter exist, which are under the jurisdiction or control of the City.

(x) Programming - Any video or audio signal carried over the Cable System that is generally considered comparable to programming provided by a television broadcast station.

(y) Service Interruption - The loss of picture or sound on one or more channels.

(z) State-of-the-Art - Capabilities that can be:

(1) readily implemented from two(2) or more sources of supply;

(2) demonstrated to be commonly available in Pennsylvania, Delaware and/or New Jersey, with the exception of the New York "Metropolitan Area", as that term is defined at the Effective Date by the United States Office of Management and Budget, under actual operating conditions (i.e., other than test or experimentation);

The term State-of-the-Art includes facilities and equipment, but does not include (i) specific services or studio devices associated with public, educational or governmental access; or, (ii) subscriber equipment or transmission technology.

(aa) Subscriber - A person or entity who contracts with Service Electric for, and lawfully receives, the video signals and Cable Services distributed by the Cable System.

## **SECTION 2** **GRANT OF FRANCHISE**

### **2.1 GRANT OF AUTHORITY**

Pursuant to the Cable Act, the regulations of the FCC and Pennsylvania law, the City hereby grants a non-exclusive and revocable franchise to Service Electric. Subject to the terms and conditions contained herein, the City hereby grants to Service Electric the right to own, construct, extend, install, operate, maintain, upgrade and rebuild a Cable System, including such wires, cables, fiber, conductors, ducts, conduits, amplifiers, pedestals, attachments and other equipment as is necessary and appropriate to the operation of the Cable System in the Public Rights-of-Way, including property over which the City has a sufficient easement or right-of-way, for the purpose of reception, transmission, amplification, origination, distribution or redistribution of video and audio signals to provide Cable Services as permitted by applicable law.

## **2.2 TERM OF FRANCHISE**

The term of this Agreement shall be for a period of ten (10) years commencing on the Effective Date and expiring on \_\_\_\_\_, unless the Franchise is terminated prior to the expiration date in accordance with the terms and conditions of this Agreement.

## **2.3 SERVICE CLASSIFICATION AND RELATED AUTHORITY**

Service Electric acknowledges and agrees that the system over which its video service is delivered is a Cable System for which the terms and conditions shall apply for at least the term of this Agreement. Service Electric further acknowledges and agrees that the grant of authority to operate a wired cable system does not include authority to provide wireless video services.

## **2.4 REPRESENTATIONS AND WARRANTIES**

(a) Service Electric represents, warrants and acknowledges that, as of the Effective Date:

(1) Service Electric is duly organized, validly existing and in good standing under the laws of the Commonwealth of Pennsylvania;

(2) Service Electric has the requisite power and authority under applicable law and its by-laws and articles of incorporation and/or other organizational documents, is authorized by resolutions of its Board of Directors or other governing body, and has secured all consents which are required to be obtained as of the Effective Date, to enter into and legally bind Service Electric to this Agreement and to take all actions necessary to perform all of its obligations pursuant to this Agreement;

(3) This Agreement is enforceable against Service Electric in accordance with the provisions herein, subject to applicable State and federal laws and regulations;

(4) There is no action or proceeding pending or threatened against Service Electric which would interfere with its performance or its ability to perform the requirements of this Agreement;

(5) Pursuant to Section 625(f) of the Cable Act, as of the Effective Date, the performance of all terms and conditions in this Agreement is commercially practicable.

## **2.5 NON-EXCLUSIVITY**

This Franchise granted to Service Electric shall be non-exclusive. Nothing in this Agreement shall affect the right of the City to grant other Franchises to construct, operate or maintain a Cable System.

## **2.6 FRANCHISE SUBJECT TO FEDERAL, STATE AND LOCAL LAWS**

This Franchise is subject to and shall be governed by all lawful and applicable provisions of federal, state and local laws and regulations. This Franchise is further subject to all applicable ordinances and resolution of the City. Without waiving any of its rights, the City agrees that, to the extent any term of this Agreement is inconsistent with the terms of any City cable franchise ordinance existing as of the Effective Date, this Agreement shall control.

## **2.7 STATE-OF-THE-ART OPTION**

Notwithstanding anything to the contrary, the City may initiate the State-of-the-Art Option (the "State-of-the-Art Option").

(1) In order to initiate the State-of-the-Art Option, the City shall first commence a review of the Cable System. Commencement of such review shall occur no earlier than thirty-six (36) months from the Effective Date and shall be completed no later than seventy two (72) months after the effective Date.

(a) The review described in this paragraph (1) above shall take into account the following:

- (1) characteristics of the Cable System;
- (2) the State-of-the-Art;
- (3) the additional benefits provided to customers by State-of-the-Art;
- (4) Subscriber demand for the State-of-the-Art;

(b) If, after conducting such review, the City determines that the exercise of the State-of-the-Art Option may be warranted, the City shall hold a public hearing to enable the general public and Service Electric to comment and present evidence.

(2) If, following such hearing, the City determines that the exercise of the State of the Art Option is warranted it may order the State of the Art be implemented (the "State-of-the-Art Order" or "Order"). The Order shall be in writing and shall set forth the basis for the City's decision. Upon agreement, the parties may amend this Franchise accordingly within sixty (60) days of the Order. If, however, Service Electric is not willing to comply with such Order or upon failure to amend this Franchise within such sixty (60) day period, Service Electric in lieu of all other rights agrees hereby that the term of this Agreement shall be shortened such that the Franchise shall expire thirty six (36) months from the date of the Order and a renewal procedure in accordance with Section 626 of the Cable Act shall be deemed to have been commenced.

**SECTION 3**  
**SYSTEM CONSTRUCTION, OPERATION AND MAINTENANCE**

**3.1     TECHNICAL REQUIREMENT**

(a)     Service Electric shall operate, maintain, construct and extend the Cable System so as to offer one-way and two-way Cable Services for all programming services throughout all parts of the City where the density requirements of Section 3.2 are met. The Cable Service provided by the Cable System shall be delivered in accordance with FCC standards. The Cable System shall meet or exceed any and all technical performance standards of the FCC, the National Electrical Safety Code, the National Electric Code and any other applicable federal laws and regulations and the laws, ordinances and construction standards of the Commonwealth of Pennsylvania and the generally applicable laws, ordinances and construction standards of the City.

(b)     Stand-by power at the headend(s) shall be provided in the event of a service interruption. Stand-by power must activate automatically upon the failure of commercial utility power.

**3.2     AREA TO BE SERVED**

(a)     Service Electric shall make Cable Service available to every dwelling occupied by a person requesting Cable Service provided that Service Electric is able to obtain from the property owners any necessary easements and/or permits in accordance with Section 621(a)(2) of the Cable Act. Service Electric shall extend the Cable System into all areas within the City where there is a minimum of twenty (20) dwelling units per linear plant mile of aerial cable and forty (40) dwelling units per underground mile of cable, calculated from the end of the nearest trunk line. Service Electric shall complete said extensions within three (3) months of written notification to Service Electric by the City that an area has met the minimum density standard set forth herein (weather permitting). Service Electric's obligation hereunder shall be subject to the timely performance of walk-out, make ready and location of all underground utilities.

(b)     Any dwelling unit within one hundred twenty-five (125) feet aerial distance from the main distribution line shall be entitled to a standard installation rate. For any dwelling unit between one hundred twenty-five (125) feet and two hundred-fifty (250) feet aerial distance from the main distribution line, Service Electric shall extend the Cable Service and the Subscriber and Service Electric shall share equally the actual cost of installation from the main distribution line. For any dwelling unit in excess of two hundred fifty feet aerial distance or that requires an underground installation, Service Electric shall extend Cable Service and the Subscriber shall pay Service Electric's actual cost of installation from its main distribution system.

(c)     The City has the right to require Service Electric to place wires and/or equipment underground, provided that the City imposes such requirement on all similarly situated entities. All installations of wires and/or equipment by Service Electric shall be underground in those areas of the City where the wires and/or equipment of similarly situated entities (i.e. telephone and electric utilities) are underground; provided, however, that such underground locations are capable of accommodating Service Electric's facilities without technical degradation of the Cable System's

signal quality. Service Electric shall not be required to construct, operate, or maintain underground any ground-mounted appurtenances such as Subscriber taps, line extenders, system passive devices, amplifiers, power supplies, or pedestals.

### **3.3 CABLE SYSTEM SPECIFICATIONS**

(a) Service Electric has designed, constructed and shall maintain a Cable System that has been built for digital television standards with the capability of no fewer than one hundred fifty (150) video channels and shall allocate a sufficient portion of said bandwidth to deliver two-way Cable Services. The cable system shall provide for video and audio reception in both standard definition (SD) and high definition (HD) channels and any other format provided by Service Electric.

(b) Service Electric reserves the right to alter, adjust, modify, rebuild, upgrade, redesign, or otherwise reconfigure the Cable System at any time during the term of the Agreement, provided that no alteration, adjustment, modification, rebuild, upgrade, redesign or other reconfiguration of the Cable System shall have the effect of reducing the technical capabilities of the Cable System as set forth in Section 3.1.

### **3.4 SYSTEM TESTS**

(a) Service Electric shall conduct proof of performance and other system tests as set forth below. Service Electric shall retain written reports of the results of any tests required by the FCC, and such reports shall be submitted to the City within thirty (30) days of a written request from the City; provided, however, that Service Electric shall not be required to submit such reports more than one (1) time in any calendar year.

(b) Service Electric shall perform the following tests on its Cable System:

(1) All tests required by the FCC; and

(2) All other tests reasonably necessary to determine compliance with technical standards adopted by the FCC at any time during the term of this Agreement or in response to subscriber complaints.

(c) At a minimum, Service Electric's tests shall include:

(1) Proof of performance when activating any new construction;

(2) Semi-annual compliance and proof of performance tests in conformance with generally accepted industry guidelines;

(3) Cable System tests and intervals required by FCC regulations.

(d) Service Electric shall maintain written records of all results of its Cable System tests performed by or for Service Electric. Such test results shall be available for inspection by the City upon request.

(e) Tests may be witnessed by representatives of the City, and, upon request, Service Electric shall inform the City of the time and place of each test. The City may conduct independent tests of the system for which Service Electric shall give its fullest cooperation. Service Electric shall be required to take prompt corrective measures to correct any system deficiencies and to prevent the recurrence of such deficiencies.

### **3.5 EMERGENCY ALERT SYSTEM**

Service Electric shall comply with the Emergency Alert System requirements of the FCC.

### **3.6 RATE DISCRIMINATION**

All Service Electric residential Subscriber rates and charges shall be published and shall not discriminate among persons in the City under similar circumstances and conditions. Service Electric shall establish similar rates and charges for all residential Subscribers receiving similar services, regardless of race, color, religion, age, sex, marital status, income or economic status, national origin, sexual orientation, physical or mental disability, or geographic location within the City. Nothing in this Section 3.6 shall be construed to prohibit:

(a) The temporary reduction or waiving of rates and charges in conjunction with promotional campaigns;

(b) The offering of reasonable discounts to senior citizens or discounts to economically disadvantaged citizens;

(c) The establishment of different and nondiscriminatory rates and charges and classes of services for commercial Subscribers, as well as different, nondiscriminatory monthly rates for classes of commercial subscribers; or

(d) The establishment of reduced bulk rates for residential Subscribers residing in multiple dwelling units.

### **3.7 SERVICES FOR SUBSCRIBERS WITH DISABILITIES**

(a) For any Subscriber with a disability or who is otherwise mobility-impaired, Service Electric shall, at no charge to the Subscriber, deliver and pick up converters and other equipment at the Subscriber's home at the Subscriber's request. In the case of a malfunctioning converter or such other equipment, the technician shall provide another converter or such other equipment, hook it up and ensure that it is working properly, and shall return the defective converter or such other equipment to Service Electric.

(b) Service Electric shall work cooperatively with any services that allow hearing-impaired Subscribers to contact Service Electric by telephone.

### **3.8 SERVICE TO MULTIPLE DWELLING UNITS (“MDU’s”)**

Service Electric and the City hereto acknowledge and agree that installation and provision of Cable Service to MDU’s are subject to a separate negotiation between the landlord, owner or governing body of any such MDU and Service Electric, which negotiations shall be conducted in accordance with the procedures set forth in the Cable Act, as amended, applicable FCC regulations, the Pennsylvania Landlord Tenant Act of 1951, as amended, and the applicable provisions of 68 P.S. § 250.501 et seq.

### **3.9 REPAIRS AND RESTORATION**

(a) Whenever Service Electric or any of its agents, including any contractor or subcontractor, takes up or disturbs any pavement, sidewalk or other improvement of any public or private property, the same shall be replaced and the surface restored in as good condition as before the disturbance within ten (10) business days of the completion of the disturbance, weather permitting. Upon failure of Service Electric to comply within the time specified and the City having notified Service Electric in writing of the restoration and repairs required, the City may cause proper restoration and repairs to be made and the expense of such work shall be paid by Service Electric upon demand by the City.

(b) Whenever Service Electric or any agent, including any contractor or subcontractor, shall install, operate or maintain equipment, cable, or wires, it shall avoid damage and injury to property, including structures, improvements and trees in and along the routes authorized by the City if required for the proper installation, operation and maintenance of such equipment, cable, or wires. Service Electric shall promptly repair and restore any public or private property that is damaged as a result of construction, installation, repair or maintenance of the Cable System within ten (10) business days, weather permitting.

(c) Service Electric’s operation, construction, repair and maintenance personnel, including all contractors and subcontractors, shall be trained in the use of all equipment and the safe operation of vehicles. Such personnel shall follow all safety procedures required by all applicable federal, state and local laws and regulations. All areas of the Cable System shall be inspected in accordance with such applicable federal, state and local laws and regulations so as to prevent hazardous conditions or risks to safety for the public and/or operating and maintenance personnel. Service Electric shall install and maintain its wires, cables, fixtures, and other equipment in such a manner as shall not interfere with any installations of the City or any public utility serving the City.

(d) Should a public safety emergency occur as a result of, incident to, or connected with operation, construction, repair, or maintenance activities by Service Electric personnel, including all contractors and subcontractors, then such personnel shall immediately contact the applicable public safety emergency dispatcher (e.g. 9-1-1).

(e) Whenever Service Electric or any agent, including any contractor or subcontractor, shall disturb any pavement, sidewalk or other public property in order to perform any underground activity, it shall utilize the Pennsylvania One Call System prior to any such disturbance. Service Electric shall adhere to any additional undergrounding requirements which the Commonwealth may establish in the future. Service Electric shall adhere to all requirements of the Pennsylvania Underground Utility Line Protection Act.

(f) All structures and all lines, equipment and connections in, over, under, and upon streets, sidewalks, alleys, and public and private ways and places of the City, wherever situated or located, shall at all times be kept and maintained in a safe and suitable condition and in good order and repair in accordance with customary industry standards and practices.

### **3.10 SERVICE AREA MAPS**

Upon request, Service Electric shall provide to the City for its exclusive use and shall maintain at its local offices a complete set of Service Electric service area strand maps of the City on which shall be shown those areas in which its facilities exist and the location of all streets. The strand maps shall be provided to the City in hardcopy and also, if requested and available, in an electronic GIS format which is compatible with the City's GIS format. The strand maps shall also designate where the cable wires and other equipment are aerial and where they are underground. Service Electric shall provide the City with updated maps within thirty (30) days after any request by the City.

### **3.11 DISCONNECTION AND RELOCATION**

(a) Service Electric shall, at no cost to the City, protect, support, temporarily disconnect, relocate in the same street, or other public way and place, or remove from any street or any other public way or place, any of its property as required by the City or its designee by reason of traffic conditions, street construction, change or establishment of street grade, site distance visibility, the construction of any public improvement or structure, or any other reason related to public health, safety and welfare.

(b) In requiring Service Electric to protect, support, temporarily disconnect, relocate or remove any portion of its property, the City shall treat Service Electric the same as, and require no more of Service Electric than, any similarly situated entity.

### **3.12 EMERGENCY REMOVAL OF EQUIPMENT**

(a) If, at any time, in case of fire or other disaster in the City, it shall be necessary, in the reasonable judgment of the City or its agent, to cut or move any of the wires, cable or equipment of the Cable System, the City shall have the right to do so without cost or liability, provided that, wherever possible, the City shall give Service Electric notice and the ability to relocate wires, cable or other equipment.



(b) In cutting or moving any of the wires, cable or equipment of the Cable System in the event of fire or other disaster, the City shall treat Service Electric the same as, and require no more of Service Electric than, any other similarly situated entity.

### **3.13 TREE TRIMMING**

(a) Service Electric, or its agents, including contractors and subcontractors, shall have the authority to trim trees upon and overhanging the Public Rights-of-Way so as to prevent the branches of such trees from coming in contact with the wires, cables, or other equipment of Service Electric. Any such tree trimming shall only be performed in accordance with applicable laws and regulations.

(b) If Service Electric or its agents, including contractors and subcontractors, wish to cut down and remove any tree or trees as may be necessary for the installation and/or maintenance of its equipment, it shall apply to the City for permission, with the exception of Emergency situations as defined in Section 1(k), and if permission is granted, shall perform such cutting and removal in accordance with the regulations of the City.

### **3.14 CHANNEL CAPACITY**

Service Electric shall meet or exceed programming and channel capacity requirements set forth in this Agreement and required by federal and state law and regulations.

### **3.15 BROADCAST CHANNELS**

To the extent required by federal law, Service Electric shall use best efforts to provide all Subscribers with Basic Service including, but not limited to: a) all broadcast television signals carried in fulfillment of the requirements of Section 614 of the Cable Act; b) the signals of qualified non-commercial educational television signals carried in fulfillment of the requirements of Section 615 of the Cable Act; and c) any Educational and Governmental Channel pursuant to Section 611 of the Cable Act. All such signals shall be delivered to Subscribers in accordance with FCC technical specifications.

### **3.16 PROGRAMMING CATEGORIES**

In addition to programming provided on any EG channels and the broadcast channels, Service Electric shall use best efforts to provide at least the following broad categories of programming:

- (a) Education
- (b) News and Information
- (c) Children's Programming
- (d) Family Programming
- (e) Government Affairs
- (f) Business News
- (g) Weather

- (h) Culture and Performing Arts
- (i) Sports
- (j) Foreign Language Programming
- (k) Science/Documentary
- (l) General Entertainment
- (m) Audio Programming Only (for hearing impaired)

The requirements for each category of Programming above may be satisfied by providing a separate Channel devoted substantially to the category or by programming more than one Channel which in the aggregate totals the equivalent of a Channel devoted substantially to the category.

### **3.17 SIGNAL SCRAMBLING**

Service Electric shall at all times comply with FCC regulations regarding scrambling or other encryption of audio and video signals.

### **3.18 CONTINUITY OF SERVICE**

Subscribers shall continue to receive service from Service Electric provided their financial and other obligations to Service Electric are honored. Subject to Force Majeure provisions in Section 9.1, Service Electric shall use its best efforts to ensure that all Subscribers receive continuous, uninterrupted service regardless of the circumstances. For the purpose of construction, routine repairing or testing of the Cable System, Service Electric shall use its best efforts to interrupt service only during periods of minimum use. When necessary service interruptions of more than twenty-four (24) hours can be anticipated, Service Electric shall notify Subscribers in advance of such service interruption along with providing Subscribers with a pro-rata credit for the time of such service interruption.

### **3.19 PARENTAL CONTROL CAPABILITY**

Service Electric shall provide Subscribers with the capability to control the reception of any video and/or audio channel on the Cable System pursuant to Section 641 of the Cable Act.

## **SECTION 4 SUBSCRIBER SERVICE STANDARDS**

### **4.1 OFFICE HOURS AND TELEPHONE AVAILABILITY**

(a) Service Electric shall maintain a business office that is conveniently located and shall be open during Normal Business Hours.

(b) Service Electric shall provide and maintain a toll free telephone access line that will be available to Subscribers twenty-four (24) hours a day, seven (7) days a week. Trained representatives shall respond to Subscriber telephone inquiries during Normal Business Hours.

After Normal Business Hours, the access line may be answered by a service or an automated response system. Inquiries received after Normal Business Hours must be responded to by a trained company representative on the next business day.

(c) Under Normal Operating Conditions and during Normal Business Hours, telephone answering time by a Subscriber representative, including wait time, shall not exceed thirty (30) seconds after the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time, measured on a quarterly basis. Under Normal Operating Conditions, the Subscriber shall receive a busy signal less than three percent (3%) of the time.

(d) If an historical record of Complaints indicates a clear failure to comply, Service Electric may be required to perform surveys to measure compliance with the telephone answering requirements above. If the City determines, after receiving Complaints itself and/or receiving a record of Complaints made to Service Electric in accordance with Sections 4.5 and/or 5.7(a), that there is a clear failure to comply with the telephone answering requirements above, the City shall notify Service Electric in writing that it must measure its compliance with these requirements for the next ninety (90) days and report to the City with its results.

#### **4.2 INSTALLATIONS AND SERVICE CALLS**

(a) Service Electric shall maintain a staff of employees sufficient to provide adequate and prompt service to its Subscribers. Service Electric shall require that any employee or agent, including any subcontractor, who personally visits any residential dwelling, shall display a photo identification badge. Any vehicle used for installation, operation or maintenance activities by any Service Electric employee or agent, including any subcontractor, shall prominently display the Service Electric logo.

(b) Standard installations will be performed within seven (7) business days after an order has been placed. "Standard" installations are those aerial installations that are located up to one hundred twenty-five (125) feet from the existing main distribution line.

(c) Upon scheduling of appointments with the Subscriber for installations, service calls and other activities, Service Electric shall provide the Subscriber with either a specific time or an "appointment window" of a maximum of four (4) hours during Normal Business Hours. Service Electric may schedule service calls and installation activities outside of Normal Business Hours at a time that is convenient for the Subscriber.

(d) Service Electric may not cancel an appointment with a Subscriber after the close of business on the business day prior to the scheduled appointment. If, at any time, an installer or technician is running late, an attempt to contact the Subscriber must be made prior to the time of the appointment. If the appointment must be rescheduled, it must be done so at a time that is convenient for the Subscriber.

### **4.3    NOTICES**

(a)    Service Electric shall provide written notice to each Subscriber upon initial subscription, at intervals not less than one (1) per year thereafter to each Subscriber and at any time upon request, regarding each of the following areas:

- (1)    Products and services offered;
- (2)    Prices and options for programming services and conditions of subscription to programming and other services;
- (3)    Channel positions of programming carried on the Cable System;
- (4)    Installation and service maintenance policies;
- (5)    Instructions on how to use the Cable Service and any converters;
- (6)    Billing and Subscriber complaint procedures;
- (7)    Service Electric's address, telephone number and office hours; and
- (8)    A notice of Subscriber privacy rights as required by federal law.

(b)    In accordance with applicable law, Service Electric shall notify Subscribers and the City in writing of any changes in rates, change in programming services or significant change in channel positions a minimum of thirty (30) days in advance of such changes provided that such change is within the control of Service Electric. Service Electric shall not be required to provide prior notice to Subscribers of any rate change that is the result of a regulatory fee, Franchise Fee or any other fee, tax, assessment or charge of any kind imposed by any federal agency, the Commonwealth of Pennsylvania or the City on the transaction between Service Electric and the Subscriber.

(c)    In accordance with federal law, Service Electric shall maintain a file available to the public containing all written notices provided to Subscribers pursuant to the requirements contained herein by Service Electric during the previous twelve (12) months.

### **4.4    BILLING**

(a)    Bills shall be clear, concise and understandable. Bills must be fully itemized, with itemizations including, all applicable service tiers, equipment charges and any installation or repair charges. Bills shall state the billing period, including an effective due date, the amount of current billing and any relevant credits or past due balances.

(b)    Service Electric shall not assess late fees for non-payment of a current bill until at least thirty (30) days have elapsed since the mailing of the bill by Service Electric.

(c) The City hereby requests that Service Electric omit the City's name, address, and telephone number from Subscriber bills as permitted by 47 C.F.R. § 76.952.

#### **4.5 SUBSCRIBER COMPLAINT PROCEDURES**

Service Electric shall establish clear written procedures for resolving all Subscriber Complaints, which shall include at least the following:

(a) Service Electric shall provide the Subscriber with a written response to a written Complaint within thirty (30) days of its receipt at the local business office. Such response shall include the results of its inquiry into the subject matter of the Complaint, its conclusions based on the inquiry, and its decision in response to the Complaint.

(b) If the City is contacted directly about a Subscriber Complaint, it shall notify Service Electric promptly and in writing. When Service Electric receives such notification, the time period for Service Electric to respond as required by Section 4.5(a) shall commence. If the City notifies Service Electric in writing, then Service Electric shall respond in writing within the time period specified in Section 4.5(a).

(c) Any Subscriber who, in good faith, disputes all or part of any bill sent by Service Electric has the option of withholding the disputed amount, without a late fee or disconnection, until Service Electric has investigated the dispute in good faith and has made a determination that the amount is owed provided that:

(1) The Subscriber provides a written Complaint to Service Electric in a timely fashion and includes identifying information;

(2) The Subscriber pays all undisputed charges; and

(3) The Subscriber cooperates in determining the appropriateness of the charges in dispute.

(d) Service Electric shall maintain Subscriber Complaint records for inspection by the affected Subscriber, which shall contain the date each Complaint is received, the name and address of the affected Subscriber, a description of the Complaint, the date of resolution of the Complaint, and a description of the resolution.

#### **4.6 DISCONNECTION**

Service Electric may disconnect or terminate a Subscriber's service for cause:

(a) If at least sixty (60) days have elapsed from the due date of the bill that Subscriber has failed to pay; and

(b) If Service Electric has provided at least ten (10) days written notice to the affected Subscriber prior to disconnection, specifying the effective date after which Cable Services are subject to disconnection; and

(c) If there is no pending good faith written dispute with Service Electric regarding the bill; or

(d) If at any time and without notice, Service Electric determines in good faith that Subscriber has tampered with or abused Service Electric's equipment or service or is engaged in theft of Cable Service.

#### **4.7 SERVICE INTERRUPTIONS**

(a) Excluding conditions beyond its control, Service Electric shall begin working on a Service Interruption promptly and in no event later than twenty-four (24) hours after the interruption becomes known and shall diligently pursue to completion. Notice of a Service Interruption of a single Subscriber shall give rise to this obligation on behalf of Service Electric. All other service calls not affecting public health, safety or welfare shall occur within a maximum of forty-eight (48) hours after notice to Service Electric or scheduled at the convenience of the Subscriber.

(b) In the event that there is a Service Interruption to any Subscriber for six (6) or more consecutive hours and upon receipt of written or credible oral request, Service Electric shall grant such Subscriber a pro rata credit or rebate, on a daily basis, of that portion of the service charge during the next consecutive billing cycle, or, at its option, apply such credit to any outstanding balance that is currently due.

#### **4.8 PRIVACY**

(a) Service Electric shall respect the rights of privacy of every Subscriber and shall not violate such rights through the use of any device or signal associated with the Cable System. Service Electric shall at all times comply with the privacy provisions of Section 631 of the Cable Act and all other applicable federal and state privacy laws and regulations.

(b) Service Electric shall at all times maintain adequate physical, technical and administrative security safeguards to ensure that personally-identifiable Subscriber information is handled and protected strictly in accordance with this policy and all applicable laws and regulations.

(c) Absent a court order or requirement of federal law, neither Service Electric nor its designee shall tap, monitor, arrange for the tapping or monitoring, any cable, line, signal, input device, or Subscriber outlet or receiver for any purpose, without the prior written authorization of the affected Subscriber; provided, however, that Service Electric may conduct system-wide or individually addressed "sweeps" solely for the purpose of verifying system integrity, checking for illegal taps, controlling return-path transmission, billing for pay services or monitoring channel usage in a manner consistent with the federal law. Service Electric shall report to the affected

parties any instances of monitoring or tapping of the Cable System, or any part thereof, of which it has knowledge, whether or not such activity has been authorized by Service Electric. Service Electric shall not record or retain any information transmitted between a Subscriber and any third party, except as required for lawful business purposes.

(d) Except as permitted by Section 631 of the Cable Act as amended, neither Service Electric nor its designee nor its employees shall make available to any third party, including the City, information concerning the viewing habits or subscription package decisions of any individual Subscriber. If a court authorizes or orders such disclosure, Service Electric shall notify the Subscriber prior to disclosure, unless such notification is otherwise prohibited by applicable law or the court.

(e) Upon a request by a Subscriber, Service Electric shall make available for inspection at a reasonable time and place all personal Subscriber information that Service Electric maintains regarding said Subscriber. Service Electric shall ensure that all information related to billing and service requests is accurate and up to date and shall promptly correct any errors upon discovery.

(f) Service Electric shall not make its Subscriber list or lists, or any portion thereof, available to any other person or entity, with or without remuneration in conformance with Section 631 of the Cable Act.

## **SECTION 5**

### **REGULATION BY THE CITY**

#### **5.1 RIGHT TO INSPECT**

(a) The City shall have the option, upon thirty (30) business days written notice and during Normal Business Hours, to inspect at the notice location for Service Electric specified in Section 9.3, all documents, records and other pertinent information maintained by Service Electric which relate to the terms of this Agreement.

(b) In addition, Service Electric shall maintain for inspection by the public and the City all records required by the FCC and as specified in 47 C.F.R. § 76.305 in the manner specified therein.

(c) Upon thirty (30) days written request to Service Electric, the City may inspect the Cable System at any time to ensure compliance with this Agreement and applicable law, including to ensure that the Cable System is constructed and maintained in a safe condition. The City may not conduct a physical inspection of the Cable System or open any vaults, pedestals or conduits without the express permission of Service Electric. The City may not inspect the Cable System on Service Electric's property other than for permitted work. If an unsafe condition is found to exist, the City, in addition to taking any other action permitted under applicable law, may order Service Electric, in writing, to make the necessary repairs and alterations specified therein forthwith to correct the unsafe condition within a reasonable time established by the City.

## **5.2 RIGHT TO CONDUCT COMPLIANCE REVIEW**

The City or its representatives may conduct a full compliance review with respect to whether Service Electric has complied with the material terms and conditions of this Agreement so long as it provides Service Electric with thirty (30) days written notice in advance of the commencement of any such review or public hearing. Such notice shall specifically reference the section(s) or subsection(s) of the Agreement that is (are) under review, so that Service Electric may organize the necessary records and documents for appropriate review by the City. Within thirty (30) days of a written request, Service Electric shall provide the City with copies of records and documents related to the cable compliance review.

## **5.3 RESERVED AUTHORITY**

The City reserves the regulatory authority arising from the Cable Act and any other applicable federal or state laws or regulations. Nothing in this Agreement shall remove, restrict or reduce the City's authority, rights and privileges it now holds, or which hereafter may be conferred upon it, including any right to exercise its police powers in the regulation and control of the use of the Public Rights-of-Way.

## **5.4 POLICE POWERS**

Service Electric's rights under this Agreement are subject to the police powers of the City to adopt and enforce general laws and regulations necessary for the safety and welfare of the public. Such laws and regulations are separate and distinct from the terms and conditions contained in this Agreement.

## **5.5 NO LIMITATION ON TAXING OR FEE AUTHORITY**

Nothing in this section or in this Agreement shall be construed to limit the authority of the City to impose any tax, fee or assessment of general applicability, so long as such tax, fee or assessment does not conflict with payment to any other municipality. Such taxes, fees or assessments shall be in addition to Franchise Fees.

## **5.6 PERMITS**

Service Electric shall apply to the City for all generally-applicable required permits and shall not undertake any activities in the Public Rights-of-Way subject to a permit without receipt of such permit, the issuance of which shall not be unreasonably withheld by the City. Service Electric shall not be required to obtain permits for Cable Service drops for individual or commercial Subscribers or for servicing or installation of pedestals or routine maintenance that does not disturb surface grade or impact vehicular traffic. Service Electric shall pay any and all required permit fees.



## **5.7 REPORTING**

In addition to the other reporting requirements contained in this Agreement, Service Electric shall provide the following reports to the City:

### **(a) Subscriber Complaint Reports**

Within thirty (30) days of a written request, Service Electric shall submit to the City a report showing the number of Complaints, as defined in Section 1(g), that required a work order and/or service call, originating from the City and received during the previous 12-month reporting period, the dates they were received, summary descriptions of the Complaints, the dates the Complaints were resolved and summary descriptions of the resolutions.

In addition and upon request, Service Electric shall provide a report containing at least the following statistical information for the previous 12-month period:

- (1) Number of repair service requests received;
- (2) Breakdown by type of complaint received (i.e. complete outage, snowy picture, etc.);
- (3) Breakdown by cause of problem (i.e. subscriber equipment, drop/converter, system, etc.);
- (4) Number of known service interruptions and the approximate length of time of each such interruption;
- (5) Average hold time for Subscriber service telephone calls that were received in the previous quarter;
- (6) Percentage of telephone calls answered within thirty (30) seconds during the previous quarter;
- (7) Percentage of telephone calls received within the previous quarter that were abandoned before being answered by a live operator; and
- (8) Percentage of time when all incoming telephone trunk lines were in a busy condition.

### **(b) Government Reports**

Service Electric shall provide to the City, upon written request, copies of any and all communications, reports, documents, pleadings and notifications of any kind which Service Electric has submitted to any federal, state or local regulatory agencies if such documents relate specifically to Service Electric's Cable System within the City. Service Electric shall provide copies of such documents no later than thirty (30) days after their request.

## **SECTION 6**

### **COMPENSATION TO THE CITY**

#### **6.1 FRANCHISE FEES**

Service Electric shall pay to the City an amount equal to five percent (5%) of the Gross Revenues derived from the operation of its Cable System to provide Cable Service in the City. Service Electric shall not deduct or otherwise credit against the Franchise Fee any tax, fee or assessment of general applicability. The City may amend the Franchise Fee upon written notice to Service Electric provided that the Franchise Fee may not exceed the maximum percentage permitted by law. A copy of the Resolution or Ordinance authorizing the Franchise Fee rate adjustment by the City shall accompany such written notice. Any change in Service Electric's Franchise Fee obligation contained herein shall commence within sixty (60) days from such written notice.

#### **6.2 QUARTERLY PAYMENTS**

Franchise Fee payments to the City under this provision shall be computed at the end of each calendar quarter. Such payments shall be made within forty-five (45) days following the end of each calendar quarter. Specifically, payments shall be due and payable on or before May 15 (for the first quarter), August 15 (for the second quarter), November 15 (for the third quarter), and February 15 (for the fourth quarter). In the event that any Franchise Fee payment is not made on or before the date by which it is due, then interest calculated at the then-current prime rate, as published by the Wall Street Journal, shall be added to the amount of Franchise Fee revenue due to the City. The interest rate shall be applied as described from the date such Franchise Fee payment was originally due. No acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any payment be construed as a release of any claim the City may have for additional sums payable under this Agreement. Upon request and if mutually agreeable, Service Electric shall deposit the Franchise Fee payments electronically into an account as designated by the City.

#### **6.3 QUARTERLY REPORTS**

Each Franchise Fee payment shall be accompanied by a written report containing an accurate statement of Service Electric's Gross Revenues received for Cable Services for each calendar quarter in connection with the operation of Service Electric's Cable System and showing the basis for the computation of fees. Specifically, the report shall contain line items for sources of revenue received and the amount of revenue received from each source. The report shall be verified by a financial representative of Service Electric.

#### **6.4 FRANCHISE FEE REVIEW**

The City shall have the right to conduct a Franchise Fee review of Service Electric's records reasonably related to the sources, amounts and computation of Gross Revenues. Any such Franchise Fee review shall occur within sixty (60) months from the date the City receives such payment, after which period any such payment shall be considered final. Within thirty (30) days

of a written request, Service Electric shall provide the City with copies of financial records related to the Franchise Fee review.

(a) In the event of an alleged underpayment, the City shall provide Service Electric with a written statement indicating the basis for the alleged underpayment. If the Franchise Fee review reveals that there have been no underpayments, the City shall provide written notice to Service Electric indicating that no underpayments were found and that the Franchise Fee review is closed. Service Electric shall have thirty (30) days from the receipt of the statement regarding an alleged underpayment to provide the City with any written objection to the results of the Franchise Fee review, including any substantiating documentation. Based on this exchange of information, the City shall make a final determination of the underpayment(s), if any, within thirty (30) days of Service Electric's objection and shall provide Service Electric with written notice of the determination. If Service Electric disputes the City's final determination, it may submit the dispute to mediation or arbitration in accordance with Section 9.7 below within thirty (30) days of receiving the City's written notice of determination. In the event that Service Electric fails to submit the matter to mediation or arbitration within the required time period, the City's final determination shall be binding on Service Electric.

(b) Any Franchise Fee payment due to the City as a result of the Franchise Fee review shall be paid to the City by Service Electric within forty-five (45) days from the date the City notifies Service Electric of its final determination, or if the matter is submitted to mediation or litigation, within forty-five (45) days from the final disposition of such action. If the Franchise Fee review shows that Franchise Fees have been underpaid, then Service Electric shall pay the underpaid amount plus monetary fines of ten percent (10%) of the underpayment. If Franchise Fees have been underpaid by five percent (5%) or more, then Service Electric shall also pay up to six thousand dollars (\$6,000) of documented out-of-pocket costs of the Franchise Fee review.

## **6.5 BUNDLED SERVICES**

If Cable Services subject to the Franchise Fee required under this Section 6.5 are provided to Subscribers in conjunction with non-Cable Services and the total cost of the bundle reflects a discount from the aggregate retail prices of the services contained therein, then the Franchise Fee shall be applied to the retail price of the Cable Services in the bundle reduced by no more than a proportionate share of the overall discount unless such pricing is related to a concerted marketing effort by Service Electric in which such requirement is not applicable.

## **6.6 FRANCHISE FEE REVENUE ALLOCATION**

For purposes of franchise fee revenue pertaining to any revenue sources that may be allocated among cable, telecommunications, and/or information services, Service Electric agrees to determine the allocation of revenue among these services based upon the actual number of subscribers in the City that subscribe to each respective service.

## **6.7 LOW INCOME SENIOR DISCOUNT**

Any qualified subscriber sixty-five (65) years or older shall be eligible to receive and shall receive from Franchisee a discount in the manner described in Appendix “A”.

## **SECTION 7** **FREE SERVICES TO THE COMMUNITY**

### **7.1 FREE SERVICES TO COMMUNITY FACILITIES**

Upon request, Service Electric shall, at no charge to the City, provide one (1) complimentary standard installation and complimentary services as described herein below to all present and future public facilities including, but not limited to, the following: the City Building, police stations, fire companies, public works buildings, municipal community facilities, water and sewer authorities, all public and private school buildings and public libraries (“Permitted Free Locations”). In addition, Service Electric shall not terminate any complimentary courtesy Cable Service being provided to Permitted Free Locations as of the Effective Date of this Agreement.

(a) Within three (3) months of the Effective Date and upon request, Service Electric shall provide or maintain one (1) standard cable Drop, outlet, converter box (and any other required end user equipment) and Standard Cable level Services (or equivalent) package to each Permitted Free Location. No charge shall be made for standard installation, except that Service Electric may charge for installation beyond two hundred (200) feet from the cable plant or for more than one (1) drop in each Permitted Free Location.

(b) Within three (3) months of the Effective Date and upon request, Service Electric shall provide or maintain one (1) high-speed internet access service connection to select Permitted Free Locations on an individual case basis. No charge shall be made for installation or service except that Service Electric may charge for installation beyond two hundred (200) feet from the cable plant.

(c) For the purposes of this section, the term “school” means an educational institution that receives funding pursuant to Title I of the Elementary and Secondary Education Act of 1965, 20 U.S.C. § 6301 *et seq.*, as amended, and does not include “home schools” or “cyber schools,” or any other educational situation that does not meet the specific criteria set forth herein. During the term of this Agreement, new public facilities shall be eligible to receive such complimentary service to the extent that they meet the qualifications as set forth herein above as Permitted Free Locations.

### **7.2 EDUCATIONAL AND GOVERNMENTAL (EG) CHANNEL**

(a) Service Electric shall provide to the City, within one hundred eighty (180) days of a written request and as set forth herein, the use of one (1) dedicated Educational and Governmental (“EG”) Access Channel in accordance with Section 611 of the Cable Act. Such EG Channel shall be used for community programming related to educational and/or governmental

activities. The City shall have complete control over the content, scheduling, administration and all other programming aspects of the EG Channel, and may delegate such functions, or a portion of such functions, to a City-based designee. Service Electric shall not exercise any editorial control over EG Channel programming. Service Electric shall cablecast the activated EG Channel so that it may be received by all Service Electric Subscribers in the City.

(b) To enable the City to utilize the EG Channel, the City shall select one (1) location within the City boundaries and Service Electric shall provide and install, within one hundred eighty (180) days of a written request by the City direct fiber links, including activation equipment capable of transmitting HD quality video and audio between the video origination location and the Service Electric headend such that live programming can originate from this selected location and be distributed via the Cable System to Subscribers in the City. This fiber link and equipment shall be collectively known as the "Return Line."

(c) Any expenditure made in connection with the construction and maintenance of the Return Line shall be at the expense of the City.

(d) Service Electric shall be responsible for maintaining the Return Line to the video origination point of the EG Channel so long as the City provides Service Electric with access to such location and access to the EG Channel equipment within such location. Service Electric shall provide, install and maintain in good working order the equipment and the cable necessary for transmitting the signal to the channel aggregation site for further processing and distribution to Subscribers. Service Electric shall maintain the EG Channel in accordance with the same FCC technical specifications that are comparable to the specifications used to maintain commercial channels transmitted to Subscribers on the Cable system, except that it shall not be responsible for the technical signal quality of programming produced by any EG channel programmer.

(e) At the time that the City and/or its designee begin to produce EG programming in high definition ("HD") format, Service Electric shall distribute the EG channel signals in HD format through the cable system. Service Electric shall distribute the signals in HD format within sixty (60) days of receipt of notice from the City that the City and/or its City-based designee has upgraded its PEG production equipment to HD format.

(f) The City or its City-based designee shall be responsible for providing any necessary production or playback equipment and shall be responsible for securing and supervising any trained/qualified personnel who conduct the operation of the EG channel. The City and Service Electric agree to work cooperatively in implementing the EG channel through such means and in such manner as shall be mutually satisfactory.

(g) Within one hundred eighty (180) days of a written request by the City, Service Electric shall, at its own cost and expense, relocate the EG origination site and the associated Return Line one time during the term of this Agreement as follows: (i) the new location must be located within one hundred two hundred fifty (250) feet of Service Electric's main distribution line; (ii) Service Electric's obligation shall be subject to the same terms and conditions that apply to the original EG origination site in this Section; and (iii) the City shall provide access to such site at least ninety (90) days prior to anticipated use of the new EG origination site. The timeline

for relocation of the EG origination site shall be subject to the timely granting of any and all required permits, walk-out, make ready, and the detection of all underground utilities.

(h) Service Electric shall include the EG Channels and programming information in all electronic program menus in a substantially similar manner and placement as the broadcast channels, including individual program listings and descriptions as provided by the City.

(i) In the event the City or its City-based designee is not utilizing any EG Channel, Service Electric may reclaim such EG Channel. Service Electric shall in turn relinquish such EG Channel no later than sixty (60) days after receipt of written notification from the City that it requires such channel for educational and/or governmental use.

(j) Service Electric, at no cost to the City, shall broadcast over the Cable System on its Bulletin Board - or equivalent - channel alpha numeric emergency messages generated by the City and electronically sent to Service Electric. Each such emergency message shall be broadcast as expeditiously as possible upon receipt. In addition, Service Electric - at the then prevailing rates - shall broadcast over the Cable System on its Bulletin Board - or equivalent - channel alpha numeric non-emergency messages generated by the City and electronically sent to Service Electric. Each such non-emergency message shall be broadcast at available dates/times which shall be determined in conjunction with the then prevailing rates.

(k) Service Electric, at no cost to the City, shall provide the City with thirty (30) minutes per week of studio and production capabilities along with broadcasting over the Cable System on its Local Origination - or equivalent - channel content either so produced at Service Electric's studio or provided by the City in an agreed upon format to Service Electric. While Service Electric has requested that the City attempt to make similar arrangements with RCN for alternating months, Service Electric agrees to satisfy the obligations set forth herein for all months regardless of RCN's willingness to agree to such alternating month arrangement.

## **SECTION 8**

### **ENFORCEMENT, INSURANCE AND INDEMINIFICATION**

#### **8.1 VIOLATIONS AND OPPORTUNITY TO CURE**

(a) If the City has reason to believe that Service Electric violated any provision of this Agreement, it shall notify Service Electric in writing of the nature of such violation and the section(s) of this Agreement that it believes has been violated and the details relating thereto. If the City does not notify Service Electric of any violation of this Agreement, it shall not operate as a waiver of any rights of the City hereunder or pursuant to applicable law.

(b) Service Electric shall have thirty (30) days to cure such violation after written notice is received by taking appropriate steps to comply with the terms of this Agreement. If the nature of the violation is such that it cannot be fully cured within thirty (30) days, the period of time in which Service Electric must cure the violation shall be extended by the City in writing for such additional time necessary to complete the cure, provided that Service Electric shall have

promptly commenced to cure and is diligently pursuing its efforts to cure in the reasonable judgment of the City.

(c) If the violation has not been cured within the time allowed under Section 8.1(b) and, in the City's judgment, Service Electric has not taken reasonable steps to cure the violation, then the City may deem that Service Electric is liable for liquidated damages and/or any other right or remedy and the City's costs in accordance with Section 8.2.

## **8.2 LIQUIDATED DAMAGES**

(a) Because Service Electric's failure to comply with provisions of this Agreement will result in injury to the City and because it will be difficult to measure the extent of such injury, the City may assess liquidated damages against Service Electric in the amount of Two Hundred Fifty Dollars (\$250.00) per day for each day the violation continues, provided Service Electric has had an opportunity to cure in accordance with Section 8.1(b). Such damages shall not be a substitute for specific performance by Service Electric or legal action by the City, but shall be in addition to such specific performance or legal action.

(b) The first day for which liquidated damages may be assessed, if there has been no cure after the end of the applicable cure period, shall be the day after the end of the applicable cure period, including any extension of the cure period granted by the City. Liquidated damages may not be assessed for a time period exceeding one hundred (100) days per violation. The City may commence revocation proceedings and/or initiate an action in law or equity in a court of competent jurisdiction before, during, or after the assessment of liquidated damages.

## **8.3 REVOCATION**

(a) In addition to the other rights, powers and remedies retained by the City under this Agreement, the City reserves the separate and distinct right to revoke this Franchise if:

(1) It is demonstrated that Service Electric practiced any fraud or deceit upon the City in the operation of its Cable System or any other activities pursuant to this Agreement;

(2) Service Electric repeatedly fails, after notice and opportunity to cure, to maintain signal quality pursuant to the standards provided for by the FCC or the technical requirements set forth in Section 3.1;

(3) Service Electric repeatedly violates, after notice and opportunity to cure, one or more of the material terms or conditions of this Agreement;

(4) Upon the appointment of a receiver or trustee to take over and conduct the business of Service Electric whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless:

(i) The receivership or trusteeship is vacated within one hundred twenty (120) days of appointment; or

(ii) The receivers or trustees have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Agreement and have remedied all defaults under this Agreement. Additionally, the receivers or trustees shall have executed an agreement duly approved by the court having jurisdiction, by which the receivers or trustees assume and agree to be bound by each and every term, provision and limitation of this Agreement.

(b) The foregoing shall not constitute a violation of a material term or condition if the violation occurs without the fault of Service Electric or occurs as a result of circumstances beyond its control or by reason of Force Majeure as defined in Section 9.1. Service Electric shall not be excused from the performance of any of its obligations under this Franchise by mere economic hardship or by the misfeasance or malfeasance of its directors, officers or employees.

(c) A revocation shall be declared only by a written decision of the City Council after an appropriate public hearing that shall afford Service Electric due process and full opportunity to be heard. This shall include the ability to introduce evidence, to question witnesses and to respond to any notice of grounds to terminate in accordance with the standards of a fair hearing applicable to administrative hearings in the Commonwealth of Pennsylvania. All notice requirements shall be met by providing Service Electric at least thirty (30) days prior written notice (via certified mail-return receipt requested) of any public hearing concerning the proposed revocation of this franchise. Such notice shall state the grounds for revocation. The City, after a public hearing and upon finding the existence of grounds for revocation, may either declare this franchise terminated or excuse such grounds upon a showing by Service Electric of mitigating circumstances or good cause for the existence of such grounds. The City shall issue such declaration and finding within thirty (30) days in a written decision which shall be sent via certified or overnight mail to Service Electric.

#### **8.4 PERFORMANCE BOND**

(a) Service Electric shall obtain and maintain, within thirty (30) days of the Effective Date and throughout the term of this Agreement, at its sole cost and expense, a performance bond with a surety company licensed to do business in the Commonwealth of Pennsylvania to ensure Service Electric's faithful performance of its obligations. The performance bond shall provide that the City may recover from the principal and surety any and all liquidated damages and/or compensatory damages incurred by the City for Service Electric's violations of this Agreement, after notice and opportunity to cure, in accordance with Sections 8.1 and 8.2.

(b) The performance bond shall be in the amount of Twenty-Five Thousand Dollars (\$25,000). Service Electric shall not reduce, cancel or materially change said bond from the requirement contained herein without the express prior written permission of the City.

#### **8.5 INSURANCE**

(a) Service Electric shall obtain and maintain, in full force and effect, at its sole cost and expense, during the Franchise term, the following minimum insurance coverage with an



insurance company that is authorized to conduct business in Pennsylvania and which has an A.M. Best rating (or equivalent) no less than A-minus VII, indemnifying the City from and against any and all claims for injury or damage to persons or property, both real and personal, caused by the construction, installation, reconstruction, operation, maintenance or removal of the Cable system by Service Electric or any of its contractors, subcontractors, agents or employees in the following amounts:

(1) The amount of such insurance against liability for damage to property shall be no less than One Million Dollars (\$1,000,000) as to any one (1) occurrence.

(2) The amount of such insurance against liability for injury or death to any person shall be no less than One Million Dollars (\$1,000,000).

(3) The amount of such insurance for excess liability shall be Three Million Dollars (\$3,000,000) in umbrella form.

(4) The amount of such insurance against all claims arising out of the operation of motor vehicles and general tort or contract liability shall be One Million Dollars (\$1,000,000).

(b) The City, its officials and employees, shall be designated as additional insureds under each of the insurance policies required in this Section 8.5.

(c) Service Electric shall not cancel any required insurance policy without obtaining alternative insurance in conformance with this Section 8.5 and without submitting insurance certificates to the City verifying that Service Electric has obtained such alternative insurance. Service Electric shall provide the City with at least thirty (30) days prior written notice in the event there is an adverse material change in coverage or the policies are cancelled or not renewed.

(d) Service Electric shall deliver to the City Certificates of Insurance showing evidence of the required coverage within thirty (30) days of the Effective Date of the Agreement, upon request by the City.

## **8.6 INDEMNIFICATION**

Service Electric shall indemnify, defend, save and hold harmless the City, its elected and appointed officials, officers, agents and employees acting in their official capacities, from claims for injury, loss, liability, cost or expense arising in whole or in part from, caused by or connected with any act or omission of Service Electric, its officers, agents, contractors, subcontractors or employees, arising out of, but not limited to, the construction, installation, upgrade, reconstruction, operation, maintenance or removal of the Cable System or any other equipment or facilities of Service Electric. The City shall give Service Electric timely written notice of its obligation to indemnify and defend the City. The obligation to indemnify, defend, save and hold the City harmless shall include, but not be limited to, the obligation to pay judgments, injuries, liabilities, damages, penalties, and reasonable attorneys' fees. If the City determines that it is necessary for it to employ separate counsel, in addition to that provided by Service Electric, the cost for such separate counsel shall be the responsibility of the City. Service Electric shall not indemnify the

City for any claims resulting solely from acts of willful misconduct or negligence on the part of the City.

## **SECTION 9** **MISCELLANEOUS**

### **9.1 FORCE MAJEURE**

If for any reason of force majeure, Service Electric is unable in whole or in part to carry out its obligations hereunder, Service Electric shall not be deemed in violation of this Agreement during the continuance of such inability.

### **9.2 REMOVAL OF SYSTEM**

(a) Upon lawful termination or revocation of this Agreement, Service Electric shall remove its supporting structures, poles, transmissions and distribution systems and other appurtenances from the streets, ways, lanes, alleys, parkways, bridges, highways, and other public and private places in, over, under, or along which they are installed and shall restore the areas to their original condition. If such removal is not completed within six (6) months of such lawful termination or revocation, the City or property owner may deem any property not removed as having been abandoned and the City may remove it at Service Electric's cost.

(b) During the term of the Agreement, if Service Electric decides to abandon or no longer use all or part of its Cable System, it shall give the City written notice of its intent at least ninety (90) days prior to the announcement of such decision, which notice shall describe the property and its location. The City shall have the right to either require Service Electric to remove the property, remove the property itself and charge Service Electric with the costs related thereto, or transfer ownership of the property to the City's designee provided fair market value is paid to Service Electric.

(c) Notwithstanding the above, Service Electric shall not be required to remove its Cable System, or to relocate the Cable System, or to sell the Cable System, or any portion thereof as a result of revocation, denial of renewal, or any other lawful action to forbid or disallow Service Electric from providing Cable Services, if the Cable System is actively being used to facilitate any other services not governed by the Cable Act.

(d) If Service Electric abandons its Cable System during the Franchise term, or fails to operate its Cable System in accordance with its duty to provide continuous service, the City, at its option, may either: (1) designate another entity to operate the Cable System temporarily until Service Electric restores service under conditions acceptable to the City, or until the Franchise is revoked and a new franchisee is selected by the City; or (2) obtain an injunction requiring Service Electric to continue operations. If the City designates another entity to operate the Cable System, Service Electric shall reimburse the City or its designee for all reasonable costs, expenses and damages incurred. The City shall be entitled to exercise options (1) and (2) above if:

(1) Service Electric fails to provide Cable Service in accordance with this Franchise over a substantial portion of the Franchise Area for seven (7) consecutive days, unless the City authorizes a longer interruption of service; or

(2) Service Electric, for any period, willfully and without cause, refuses to provide Cable Service in accordance with this Franchise.

### **9.3 NOTICES**

Every notice or payment to be served upon or made to the City shall be sent to:

The Office of the Mayor  
City of Allentown  
435 Hamilton Street  
Allentown, PA 18101

with a copy to:

Cohen Law Group  
413 South Main Street - Third Floor  
Pittsburgh, PA 15215  
Attention: Office Manager

The City may specify any change of address in writing to Service Electric.

Every notice or payment to be served upon or made to the City shall be sent to:

Service Electric Cable TV, Inc.  
2260 Avenue A  
Bethlehem, PA 18017  
Attn: General Manager

Service Electric may specify any changes of address in writing to the City.

Each delivery to Service Electric or the City shall be equivalent to direct personal notice, direction or order, and shall be deemed to have been given at the time of receipt.

### **9.4 EQUAL EMPLOYMENT OPPORTUNITY**

Service Electric is an equal opportunity employer and shall comply with all applicable federal and state laws and regulations regarding equal opportunity employment.

## **9.5    CAPTIONS**

The captions for 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.

## **9.6    GOVERNING LAW; VENUE**

This Agreement shall be governed and construed by and in accordance with the laws of the Commonwealth of Pennsylvania. If suit is brought by a party to this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of Pennsylvania, County of Lehigh, or in the United States District Court for the Eastern District of Pennsylvania.

## **9.7    DISPUTE RESOLUTION**

### **(a)    Arbitration**

(1) Any dispute between the parties hereto, including but not limited to, disputes or controversies arising from or related to interpretation of this Agreement, may be arbitrated provided that both parties consent in writing to the arbitration. Such arbitration shall be final and binding, and the parties shall have no right to appeal from the arbitrator's decision.

(2) The City may initiate a request for arbitration by resolution of its City Council, while Service Electric may initiate arbitration by sending written notice to the City.

(3) After arbitration has been initiated, the City and Service Electric may agree that one arbitrator may conduct the arbitration and may mutually select such arbitrator.

(4) If either the City or Service Electric does not consent to having one arbitrator conduct the arbitration or if the parties cannot agree upon the identity of such arbitrator, the arbitration shall be conducted by three arbitrators, who shall be selected as follows:

(i) If the City initiates arbitration, the City shall select one arbitrator and Service Electric by written notice shall select one arbitrator within fifteen (15) days after receiving notice of the City's selected arbitrator. If Service Electric initiates arbitration, it shall select one arbitrator, and the City shall select one arbitrator within fifteen (15) days after receiving notice of the Service Electric's selected arbitrator.

(ii) The two selected arbitrators shall select a third arbitrator within fifteen (15) days after the appointment of the second arbitrator. If the two arbitrators are unable to agree upon a third arbitrator within the time limit, the third arbitrator shall be appointed by the presiding civil judge of the Lehigh County Court of Common Pleas.

(5) After selection of the arbitrator(s), the arbitrator(s) shall take an oath to serve neutrally and impartially. The arbitrator(s) shall then schedule a date, time and place for the arbitration hearing. The hearing shall occur not less than one hundred twenty (120) days after the

appointment of the arbitrator (or the third arbitrator, if three arbitrators are used), unless extended by mutual agreement of the City and Service Electric. The arbitrator(s) shall make a written report to the City and Service Electric on the final determination within thirty (30) days after completion of the hearing. If the arbitration is conducted by three arbitrators, the determination of a majority of the arbitrators shall constitute a final, binding arbitration determination. The arbitration shall be conducted according to the Uniform Arbitration Act.

(6) The City and Service Electric shall share equally and separately the fees and costs of the arbitrator(s).

(b) Mediation

The City and Service Electric agree that, should any dispute arise between the parties concerning any aspect of this Agreement which is not resolved by mutual agreement of the parties, the dispute may be submitted to mediated negotiation prior to any party commencing arbitration or litigation. In such event, the City and Service Electric may agree to participate in good faith in a non-binding mediation process. The mediator shall be selected by mutual agreement of the parties. In the absence of such mutual agreement, each party shall select a temporary mediator, and those mediators shall jointly select a permanent mediator. If the City and Service Electric are unable to successfully conclude the mediation within sixty (60) days from the date of the selection of the mediator, either party may terminate further mediation by sending written notice to the other party. After written termination notice has been received by the other party, either party may request arbitration, as set forth in Section 9.7(a), or may pursue any other available legal remedies. All costs associated with mediation shall be borne, equally and separately, by the parties.

**9.8 TRANSFER, ASSIGNMENT OR CHANGE IN CONTROL**

(a) Neither Service Electric nor its parent nor any Affiliated Entity shall transfer, assign or otherwise encumber, through its own action or by operation of law, its right, title or interest in the Cable System or in this Agreement without the prior written consent of the City, provided that such consent shall not be unreasonably withheld.

(b) Neither Service Electric nor its parent nor any Affiliated Entity shall change, transfer or assign, through its own action or by operation of law, its control of the Cable System or of this Agreement without the prior written consent of the City, provided that such consent shall not be unreasonably withheld.

(c) Neither Service Electric nor its parent nor any Affiliated Entity shall sell, convey, transfer, exchange or release more than twenty-five percent (25%) of its equitable ownership in the Cable System without the prior written consent of the City, provided that such consent shall not be unreasonably withheld.

(d) No such consent shall be required for (i) a transfer in trust, by mortgage, hypothecation, or by assignment to a financial institution of any rights, title or interest of Service

Electric in the Franchise or in the Cable System in order to secure indebtedness; or (ii) a transfer to an entity owned and/or controlled by Service Electric or its principals.

(e) Service Electric shall make written application to the City of any transfer, change in control or assignment as described above and shall provide all information required by FCC Form 394 and any other applicable federal, state, and local statutes and regulations regarding transfer or assignment. The City shall have thirty (30) days from the receipt of FCC Form 394 to notify Service Electric of any additional information it needs to make an informed decision on the transfer or assignment. The City shall have one hundred twenty (120) days from the receipt of all required information to take action on the transfer or assignment.

(f) Any consent by the City for any transfer or assignment described above shall not be effective until the proposed transferee or assignee shall have executed a legally binding document stating that it shall be bound by all the terms and conditions contained in this Agreement.

## **9.9 ENTIRE AGREEMENT**

This written instrument contains the entire agreement between the parties, supersedes all prior agreements or proposals whether written or oral except as specifically incorporated herein, and cannot be changed without written amendment approved by both the City and Service Electric. This Agreement supersedes all prior cable franchise agreements or cable ordinances, or parts of cable franchise agreements or cable ordinances, that are in conflict with the provisions herein.

## **9.10 SEVERABILITY**

If any section, provision or clause of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, or is pre-empted by federal or state laws or regulations, such section, provision or clause shall be deemed to be severable from the remaining portions of this Agreement and shall not affect the legality, validity or enforceability of the remaining portions of this Agreement.

## **9.11 NO WAIVER OF RIGHTS**

No course of dealing between the City and Service Electric, nor any delay on the part of the City in exercising any rights hereunder, shall operate as a waiver of any such rights of the City or acquiescence in the actions of Service Electric in contravention of such rights, except to the extent expressly waived by the City.

## **9.12 CHANGE OF LAW**

In the event there is a change in a federal or state statute or regulation applicable to the Cable System or to this Agreement, the City or Service Electric may notify the other party of its desire to amend this Agreement in order to comply with the change in statute or regulation. The City and Service Electric may amend this Agreement to comply with such change in statute or regulation provided such amendment is approved by the City and Service Electric.

**9.13 COMPLIANCE WITH LAWS**

Service Electric shall comply with all federal, state and local laws and regulations.

**9.14 THIRD-PARTY BENEFICIARIES**

Nothing in this Agreement is or was intended to confer third-party beneficiary status on any person other than the parties to this Agreement to enforce the terms of this Agreement.

**9.15 APPLICABILITY OF AGREEMENT**

All of the provisions in this Agreement shall bind Service Electric, the City and their respective successors and assigns. This Agreement is authorized by Resolution No.\_\_\_\_\_ dated \_\_\_\_\_, 2018 of the City Council.

**WITNESS** our hands and official seals to this Cable Franchise Agreement.

**CITY OF ALLENTOWN**

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

Name: \_\_\_\_\_

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

Date: \_\_\_\_\_

**SERVICE ELECTRIC CABLE TV, INC.**

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

Name: \_\_\_\_\_

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

Date: \_\_\_\_\_

## **EXHIBIT A**

### **LOW INCOME SENIOR DISCOUNT**

To qualify for this discount:

1. Applicant's name must be on the account.
2. Applicant must be the head of the household.
3. Applicant must be sixty-five (65) years of age or above.
4. Applicant must provide proof of age.
5. Applicant must provide proof of income eligibility by submitting one of the following documents:
  - a. Supplemental Security Income
  - b. Veterans Service Benefits
  - c. PACE or PACENET Medical Card
  - d. Medicaid Medical Card

Discount is not applicable to promotional rates, currently discounted rates and/or Bundled Services.

Discount is \$2.00 off Limited Basic Service or \$4.00 off Full Basic Service.

We appreciate your patronage!

Please return the bottom portion in the enclosed envelope with the required documents.

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I declare that there is not more than one (1) other person under the age of sixty-five (65) residing at the above address with me. I further, and finally, declare that the foregoing statements made by me are true. I am aware that if any of the statements I have made are willfully false, I am subject to punishment to the full extent allowed by law.

**SOCIAL SECURITY NUMBER:** \_\_\_\_\_

**SIGNATURE:** \_\_\_\_\_ **DATE:** \_\_\_\_\_