

**CITY OF PEORIA, ARIZONA
COUNCIL COMMUNICATIONS**

cc: 20C
Amend No. _____

Date Prepared: June 10, 2010

Council Meeting Date: July 6, 2010

TO: Honorable Mayor and Council
FROM: Stephen M. Kemp, City Attorney
THROUGH: Stephen J. Burg, Chief Assistant City Attorney
PREPARED BY: Ellen M. Van Riper, Assistant City Attorney
SUBJECT: **CoxCom, Inc. Cable Television License Agreement Renewal**

RECOMMENDATION:

That the Mayor and Council approve and adopt a new license agreement with CoxCom, Inc., a Delaware corporation, to provide cable services within the City to take effect upon the expiration of the existing Cable Television License Agreement between the City of Peoria and CoxCom, Inc. The existing license agreement expired on June 30, 2010. Prior to the expiration, CoxCom agreed to continue to provide this service pending approval of the new license agreement.

SUMMARY:

The City of Peoria is authorized to grant, renew, deny, and terminate licenses for the installation, operation, and maintenance of cable systems within the City boundaries by virtue of federal and state statutes. The City previously entered into a license agreement with CoxCom, Inc., which expired on June 30, 2010. The City and CoxCom, Inc. have negotiated a new Cable Television License Agreement that is consistent with applicable provisions of the Arizona Revised Statutes and the Peoria City Code. This new license agreement has a term date of fifteen (15) years as permitted by the Peoria City Code.

Therefore, it is recommended that the Mayor and Council approve and adopt the new Cable Television License Agreement with CoxCom, Inc., to take effect immediately upon approval and execution.

ATTACHMENTS:

1. Cable Television License Agreement

COXCOM, INC.
CITY OF PEORIA
CABLE TELEVISION LICENSE AGREEMENT

Effective July 1, 2010

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CABLE TELEVISION LICENSE AGREEMENT

This Cable Television License Agreement (the "License") is made and entered into on this ___ day of June, 2010, by and between the City of Peoria (the "City") and CoxCom, Inc., a Delaware corporation ("Licensee").

RECITALS

- A. The City is authorized to grant, renew, deny, and terminate Licenses for the installation, operation, and maintenance of Cable Systems and otherwise regulate Cable Services within the City boundaries by virtue of federal and state statutes, by the City's police powers, by its authority over its public rights-of-way, and by other City powers and authority.
- B. Licensee has maintained and operated a Cable System in the City pursuant to the Existing License, which expires by its terms on June 30, 2010.
- C. Licensee and the City desire to enter into a new license to provide Cable Services within the City to take effect upon the expiration of the Existing License.
- D. The City has reviewed Cable Service in the City, including but not limited to a review of Licensee, Licensee's record of service in the City, Licensee's facilities, the cable-related community needs of the City for both the present and future, Licensee's ability to carry out its commitments, and Licensee's overall financial, legal, and technical qualifications to hold a license from the City.
- E. Based on such review, the City hereby finds that it would serve the public interest to grant a license on the terms and conditions hereinafter set forth, and Licensee agrees to obtain a license under these conditions.

AGREEMENT

In consideration of the foregoing recitals, which are incorporated herein by reference, the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows.

1. **Definitions.** For the purposes of this License, the following terms, phrases, words, abbreviations, and their derivations have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory, not merely directory. All references to days are to calendar days, unless otherwise specified.

1.1. "Affiliate" means any Person who owns or controls, is owned by or controlled by, or is under common ownership or control with Licensee.

1.2. "Cable Act" means the Cable Communications Policy Act of 1984, as amended, including the Telecommunications Act of 1996.

1.3. "Cable Service" means the transmission to Subscribers of video programming or other programming services and Subscriber interaction, if any, that is required for the selection or use of the video programming or other programming services.

1.4. "Cable System" means a facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Services, that includes video programming, and that is provided to multiple Subscribers within the City, but such term does not include (a) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (b) a facility that serves Subscribers without using any public right-of-way; (c) a facility of a common carrier that is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, except that such facility shall be considered a Cable System to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (d) an open video system that complies with 47 U.S.C. § 653; or (e) any facility of an electric utility used solely for operating its electric utility systems. Any reference to Licensee's Cable System refers to the Cable System as a whole or any part thereof. As used above, "interactive on-demand services" means a service providing video programming to Subscribers over switched networks on an on-demand, point-to-point basis, but does not include services providing video programming prescheduled by the programming provider.

1.5. "City Building" means a building that is both (a) occupied by the City or owned by the City and (b) used for municipal purposes.

1.6. "City Channels" means the Government, Public Safety, and Education Channels provided for in Section 4.

1.7. "City Council" means the present governing body of the City or any future body constituting the legislative body of the City.

1.8. "City Manager" means the City Manager or the City Manager's designee.

1.9. "Competitor" means any Person entering into the Public Streets for the purpose of constructing or operating a Cable System, or for the purpose of providing Cable Service or video programming service to any part of the License Area, including by means of an "open video system" (as such term is defined in the Cable Act).

1.10. "Confidential Information" means any and all technical data, materials, reports, and other information owned by or developed by, or on behalf of Licensee and/or its Affiliates, any information that relates to the Cable System, and any and all financial data and information relating to Licensee's business, that Licensee discloses in writing, orally, visually, or through some other media, or that the City learns or obtains through observation, analysis, compilation, or other study of such information, data, or knowledge, except any portion thereof that (a) is known to the City at the time of the disclosure, as evidenced by its written records and was not acquired by the City on a confidential basis; (b) is disclosed to the City by a third party having a right to make such disclosure; (c) becomes published, or otherwise publicly known through no

fault of the City; or (d) is independently developed by or for the City without use of Confidential Information disclosed hereunder as evidenced by its written records.

1.11. "Education Channel" means the channel provided for in Section 4.3 of this License.

1.12. "Existing License" means the Cable Television License Agreement dated July 1, 1995 by and between Cox Cable Phoenix, Inc. and the City.

1.13. "FCC" means the Federal Communications Commission or its designated representative.

1.14. "Government Channel" means the channel provided for in Section 4.1 of this License.

1.15. "Gross Revenues" means all cash, credits, property of any kind or nature, or other consideration, less related bad debt not to exceed one and one-half percent annually, that is received directly or indirectly by Licensee, its affiliates, subsidiaries or parent or any person, firm or corporation in which Licensee has a financial interest or that has a financial interest in Licensee and that is derived from Licensee's operation of its Cable System to provide cable service in the City. Gross revenues include all revenue from charges for Cable Service to Subscribers and all charges for installation, removal, connection or reinstatement of equipment necessary for a Subscriber to receive Cable Service, and any other receipts from Subscribers derived from operating the Cable System to provide Cable Service, including receipts from forfeited deposits, sale or rental of equipment to provide Cable Service, late charges, interest and sale of program guides. Gross revenues also include all income Licensee receives from the lease of its facilities located in the Public Streets, unless services that the lessee provides over the leased facilities are subject to a transaction privilege tax of the City. Gross revenues do not include revenues from commercial advertising on the Cable System, the use or lease of studio facilities of the Cable System, the use or lease of leased access channels or bandwidth, the production of video programming by Licensee, the sale, exchange, use or cablecast of any programming by Licensee in the City, sales to Licensee's Subscribers by programmers of home shopping services, reimbursements paid by programmers for launch fees or marketing expense, License Fees, taxes, or other fees or charges that Licensee collects and pays to any governmental authority, any increase in the value of any stock, security, or asset, or any dividends or other distributions made in respect of any stock or securities.

1.16. "License Area" means the current incorporated boundaries of the City and any future annexed area.

1.17. "License Fee" means the fee set forth in Section 3 of this License.

1.18. "MDU" means any adjacent building(s) such as apartments under common ownership containing more than four dwelling units used as living quarters.

1.19. "Normal Business Hours" means those hours during which most similar businesses in the community are open to serve Subscribers.

1.20. "Normal Operating Conditions" means those service conditions that are within Licensee's control including, but not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System. Those conditions that are not within Licensee's control include, but are not limited to, natural disasters, civil disturbances, utility company power outages, telephone network outages, and severe or unusual weather conditions.

1.21. "Person" means an individual, partnership, association, joint stock company, trust, corporation, limited liability company, or governmental entity.

1.22. "Public Safety Channel" means the channel provided for in Section 4.2 of this License.

1.23. "Public Street" means only a street, road, highway, freeway, lane, path, alley, court, sidewalk, parkway, right-of-way, or drive that is owned by a public entity in fee or as to which a public easement has been dedicated for street purposes, and with respect to which, and to the extent that, City has a right to grant the use of the surface of, and space above and below in connection with this License for the Cable System, or other compatible uses; provided, however, a requirement that Licensee also obtain a permit from another government agency or entity to use of street, road, highway, freeway, lane, path, alley, court, sidewalk, parkway, right-of-way, or drive does not mean that such street, road, highway, freeway, lane, path, alley, court, sidewalk, parkway, right-of-way, or drive is not a Public Street.

1.24. "Standard Drop" means a cable connection that requires no more than a 150-foot drop measured from the nearest point of a Subscriber's home or place of business to the nearest existing technically feasible point on the Cable System from which an individual Subscriber can be connected to the Cable System. A Standard Drop involves only one outlet and standard materials. A Standard Drop does not include the following (the cost of which may be assessed directly to the Subscriber): (a) a wall fish; (b) custom installation work, including specific Subscriber-requested work that requires non-standard materials or cable routing that requires construction methods exceeding reasonable underground or aerial work; or (c) the cost of any equipment or construction modifications necessary to provide an adequate signal over the Standard Drop to the Subscriber's residence.

1.25. "Subscriber" means any Person lawfully receiving the Cable Services of Licensee's Cable System.

1.26. "Subscriber Complaint" means any written or oral complaint by a Subscriber to the City that the Subscriber did not receive the Cable Service that the Subscriber requested consistent with the requirements of this License.

2. **Grant of Authority to Operate; Term.**

2.1. Grant of Authority. The City hereby grants to Licensee the right and authority to operate a Cable System in the City and for that purpose to erect, install, solicit, construct, repair, replace, rebuild, reconstruct, maintain, and retain in, on, over, upon, across, and along any Public Streets such poles, wires, cable fiber optics, conductors, ducts, conduit, vaults, manholes, pedestals, amplifiers, appliances, attachments, power supplies, network reliability units, and

other property or equipment as may be necessary or appurtenant to the Cable System; and, in addition, so to use, operate, and provide similar facilities or properties rented or leased from other Persons, including but not limited to any public utility or other entity licensed or permitted to do business in the City. Nothing in this License shall be construed to prohibit Licensee from offering any service over its Cable System that is not prohibited by federal or state law.

2.2. Competitive Parity.

2.2.1. Licensee's right to use and occupy the Public Streets in the City for the purpose herein provided shall not be exclusive. However, the City agrees not to allow any person to enter into the Public Streets for the purpose of constructing or operating a Cable System, or for the purpose of providing Cable Service or video programming service to any part of the License Area, including by means of an "open video system" (as such term is defined in the Cable Act), without first obtaining a permit, license, authorization, or other agreement from the City or such other governmental entity then entitled to grant such permit, license, authorization, or other agreement.

2.2.2. The material provisions of the agreement under which any Competitor is authorized to enter the Public Streets shall be reasonably comparable to those contained herein, and the obligations imposed on Licensee shall be no less burdensome nor more favorable than the obligations imposed upon such Competitor, in order that one operator not be granted an unfair competitive advantage over another. In the event that a Competitor is authorized to enter the Public Streets on terms and conditions that are less burdensome or more favorable than the obligations imposed on Licensee hereunder, this License shall automatically be amended to be consistent with the terms and conditions on which the Competitor is authorized to enter the Public Streets.

2.3. Prior Occupancy. Any privilege claimed under this License by Licensee in any Public Street or other public property is subordinate to any (a) prior or subsequent lawful occupancy or use thereof by the City or any other governmental entity, (b) prior lawful occupancy or use thereof by any other Person, and (c) prior easements therein; provided, however, that nothing herein extinguishes or otherwise interferes with property rights established independently of this License.

2.4. Term. This grant of authority runs for a term of fifteen years, effective at midnight on July 1, 2010, and ending at 11:59 p.m. on June 30, 2025.

3. License Fee.

3.1. License Fee. Licensee shall pay to the City a License Fee in an amount equal to five percent (5%) of Licensee's Gross Revenues during the term of this License.

3.2. Offsets. Licensee is entitled to offset against License Fees due to the City the following.

3.2.1. Any amounts Licensee paid to the City during the prior quarter in privilege license taxes; provided, however, that Licensee is not entitled to offset to the extent that Licensee made payments of privilege license taxes on any gross income

(within the meaning of the privilege license tax ordinance) that is not included in Gross Revenues.

3.2.2. Any amounts Licensee paid during the prior quarter for repair, renovation, restoration, or reconstruction to comply with any requirements of the City that exceed the repair and restoration requirements set forth in Section 12.7 of this License, including but not limited to repair, renovation, restoration, or reconstruction required by any pavement restoration ordinance or similar ordinance adopted by the City and applicable to Licensee.

3.2.3. Any amounts Licensee paid to the City during the prior quarter for right-of-way management fees, construction permit, permit design fee, building permit fees, encroachment permit fees, inspection fees, zoning review fees, pavement restoration fees, and any other fees that City imposes, under City Code requirements or otherwise, on Licensee's construction activities in the Public Streets.

3.3. Payment of License Fees. The payment of the License Fee shall be made quarterly by delivery to the City Manager on or before the thirtieth (30th) day of the month following the end of each calendar quarter, with a fifteen (15)-day grace period. At the time License Fees are due, Licensee will provide to the City an itemized report detailing (i) the amount of License Fees due to the City; (ii) a detailed report of all taxes paid and costs incurred by Licensee and the portion of such costs that are being offset in accordance with Section 3.2 above; and (iii) the amount of License Fees, if any, being paid to the City after accounting for any offset.

3.4. License Fee Audit.

3.4.1. Upon written notice to Licensee, the City may inspect Licensee's records of Gross Revenues, and the City and Licensee each have the right to audit and to recompute any amounts determined to be payable under this License; provided, however, that such audit must take place within thirty-six months following the close of Licensee's fiscal year for which the audit is desired.

3.4.2. Upon completion of an audit, the City shall provide Licensee with written notice including a copy of the audit report and setting forth any additional amounts due to the City identified in the audit. Licensee shall pay any deficiency within thirty (30) days following such written notice; provided, however, that Licensee will not be required to pay such deficiency until thirty (30) days after completion of the administrative hearing process if Licensee commences such process pursuant to Section 19.2. If there is a deficiency in the payment of License Fees to the City of ten percent or more, the City may assess the cost of the audit to Licensee.

3.4.3. Licensee may recover overpayment(s) of License Fees by taking credits of up to one-hundred percent of each subsequent quarterly License Fee payment due to the City until Licensee has recouped the full amount of the overpayment, without interest.

4. City Channels.

4.1. City Channels. Licensee will provide the City the channel capacity for two (2) channels of public, educational or governmental access programming as required by federal and state law in the Basic Service tier of the Cable System and two (2) channels of noncommercial governmental programming in the digital programming tier of the Cable System.

4.2. Basic Service Tier.

4.2.1. Government Channel. Licensee shall continue to make available in the Basic Service Tier at no charge to the City one (1) channel on the Cable System designated as a Government Channel to be used by City government officials and agencies. The Government Channel is for use by the City for non-commercial, informational programming regarding government activities and programs.

4.2.2. Education Channel. Licensee shall continue to make available in the Basic Service tier at no cost to the City one (1) channel on the Cable System designated as an Education Channel. The Education Channel shall be used by the City for non-commercial, informational programming regarding educational activities and programs.

4.3. Digital Channels. Within one hundred twenty (120) days of written request by the City, Licensee shall make available in the digital programming tier at no cost to the City one (1) channel to be designated as a Government, Public Service (fire or police) or Education Channel for use by the City for non-commercial, informational programming regarding government or education activities and programs. The City may request two (2) such channels in addition to the channels specified in Section 4.2.

4.4. Point of Origin. The City Channels shall each originate from a studio designated by the City within the corporate limits of the City. Licensee shall establish the connection to the Cable System necessary for each of the City Channels to originate from this location at no cost to the City. If the City elects to relocate the point of origination for any of the City Channels, the City shall bear the entire cost of such relocation.

4.5. Maintenance of Equipment. Licensee shall provide at no charge to the City prompt and regular periodic maintenance and replacement of any cables, amplifiers, and other distribution equipment owned by Licensee and used for the City Channels. The City shall provide and operate and maintain at its expense all other equipment and facilities necessary for operation of the City Channels.

4.6. Downstream Programming from Another City or City. If the City elects to receive downstream programming from another city or town, the City shall pay all costs incurred by Licensee in providing for the City to receive such programming. The City must obtain the necessary consents from the city or town that originated the programming before Licensee takes any steps to provide the City with such programming.

4.7. Location of Channels. Licensee may, in its sole discretion, determine the tier and channel location of the City Channels and the method for delivering these channels over the Cable System.

4.8. Unused Capacity. Licensee may utilize unused capacity on the City Channels for any purpose under rules and procedures established by the City. Licensee and the City will annually review the use of the City Channels and, upon mutual agreement between Licensee and the City, the City may relinquish one or more of the City Channels to Licensee for use as Licensee sees fit.

5. **Services to the City.**

5.1. Service to City Buildings. Upon written request from the City Manager, Licensee shall provide at no charge to the City Licensee's Basic tier of service to City Buildings.

5.2. Drops to City Buildings. If making service available to a City Building requires no more than a Standard Drop, Licensee shall make service available without charge to City Buildings. If making service available to a City Building requires more than a Standard Drop, Licensee will not be required to make such service available unless the City entity requesting such service pays to Licensee an amount equal to the actual, reasonable labor and material costs incurred by Licensee for the additional facilities and work, less Licensee's cost for a Standard Drop. Absent a showing by Licensee to the City Manager of unusual circumstances, which include without limitation street crossings or plant extensions, any Standard Drop to any City Buildings shall be accomplished within ten (10) days of the written request for service.

6. **Required Service; System Design and Capacity.**

6.1. System Design. The Cable System, as installed, uses a hybrid fiber optic/coaxial cable network. The Cable System is built so that fiber is provided to all neighborhood nodes. Extending from each optic site is radio frequency coaxial cable.

6.2. System Capacity. The channel capacity of the Cable System is expandable as future needs arise. At a minimum, system capacity of 750 MHz must be available for signal transmission on the Cable System.

7. **Changes in Cable Technology.**

7.1. Periodic Meetings. The City and Licensee will meet at periods not exceeding three years or upon the written request of either to discuss changes in cable television laws, regulations, technology, competing services, the needs of the community, and other factors impacting cable television. As a result of these discussions, this License may be modified by mutual agreement of the City and Licensee to respond to a change in laws, regulations, technology, competing services, the needs of the community, or other factors affecting cable television.

7.2. Certain Conditions. If any of the following conditions occur, and upon written request of either Licensee or the City, the City Manager and Licensee will meet and discuss in good faith the terms of a mutually agreeable amendment to this License:

7.2.1. Cable Service similar to the Cable Service offered by Licensee is provided by any Competitor that is not subject to similar licensing requirements of the City; or

7.2.2. any other significant event occurs, including but not limited to changes of federal or state law or a final non-appealable order or judgment by a court of competent jurisdiction, which either the City or Licensee believes may affect the current terms and conditions of this License.

7.3. Purpose. The purpose of the meetings set forth in this Section is to use best efforts to reach mutually acceptable agreement for recommendation to the City Council for proposed action on amendments to this License to relieve the City or Licensee from any commercial impracticability that arises during the term of this License. This Section 7 is intended to facilitate a process whereby the parties may reach a mutually acceptable agreement to amend this License, but does not require that this License be amended.

8. Line Extension.

8.1. Residential Service. Licensee shall extend its Cable System to serve dwelling units within the City as contemplated in this Section 8.1. Each unit in an MDU is counted as a dwelling unit in determining the residential density, provided a mutually acceptable agreement granting Licensee reasonable access to the MDU has been executed and delivered. Licensee is not required to make service available to residents of an MDU where the owner of the property has not granted Licensee reasonable access to the property.

8.1.1. When requested by a resident or developer in the City, Licensee shall, at Licensee's sole expense, extend the Cable System to any single family residence or dwelling within the City, provided that such extension involves density of thirty-five existing homes per cable plant mile measured from the nearest technically feasible point of connection on the Cable System, determined by Licensee in its sole discretion.

8.1.2. When a resident or developer in the City requests an extension of service to an area that does not meet the minimum density set forth above in Section 8.1.1, Licensee must comply with such request only if the resident or developer agrees to pay to Licensee an amount equal to all incremental costs incurred beyond those for an extension otherwise involving a density of thirty-five existing homes per mile. The incremental costs to be paid will be Licensee's costs (reasonable labor and materials) of extending the Cable System consistently with Licensee's overall system design to the residence, or to and throughout the development, from the nearest technically feasible point of connection on the Cable System, as determined by Licensee in its sole discretion. The costs will include splicing in one or more taps and extending cable.

8.1.3. Where there is a request by a developer for an extension to a development that does not meet the minimum density test set forth in Section 8.1.1 and where, instead of proceeding under Section 8.1.2, the developer agrees to pay Licensee's full costs (reasonable labor and materials) of extending the Cable System from the nearest technically feasible point of connection on the Cable System to the nearest Public Street access to the development, Licensee shall then extend the Cable System within the development, at Licensee's sole cost, if it has a density of thirty-five existing homes per mile measured from the nearest Public Street access to the development to which the developer elected to pay to have the Cable System extended.

8.1.4. Absent a showing by Licensee to the City Manager of circumstances beyond Licensee's reasonable control, an extension of service pursuant to Sections 8.1.1, 8.1.2, or 8.1.3 must be accomplished within one hundred twenty (120) days after the developer or resident's written request.

8.1.5. To prevent unnecessary disruption and damage to Public Streets, rights-of-way, and other property, the installation of Cable System must be accomplished in new subdivisions at the same time, and in the same trench as other communications, electric, and other permanent services to structures. Except to the extent that federal law grants them other rights, developers of new residential buildings or mobile homes within a new or undeveloped subdivision, new residential units within new multiple occupancy residential developments, and new commercial and industrial buildings and structures shall treat cable television facilities as they treat other communication facilities, utilities, and other underground facilities, in regards to availability and cost of joint trenching for underground installation.

8.2. Commercial Service. Licensee shall make Cable Services available to commercial establishments as set forth below. Licensee will not be required to make service available to commercial establishments where the owner of the property has not granted Licensee reasonable access to the property.

8.2.1. When requested by the owner of a commercial or residential establishment in the City, Licensee shall, at Licensee's sole expense, extend the Cable System to any commercial or industrial establishment within the City, provided that such extension involves density of one hundred hook-ups per cable plant mile measured from the nearest technically feasible point of connection on the Cable System determined by Licensee in its sole discretion.

8.2.2. When the owner of a commercial or industrial establishment within the City requests an extension of service to an area that does not meet the minimum density set forth in Section 8.2.1, Licensee shall be required to comply with such request only if the owner agrees to pay to Licensee an amount equal to all incremental costs incurred beyond those for an extension otherwise involving a density of one hundred hook-ups per cable plant mile. The incremental costs to be paid will be Licensee's costs (reasonable labor and materials) of extending the Cable System consistently with Licensee's overall system design to the establishment from the nearest technically feasible point of connection on the Cable System, as determined by Licensee in its sole discretion. The costs will include splicing in one or more taps and extending cable.

8.2.3. Absent a showing by Licensee to the City Manager of circumstances beyond Licensee's reasonable control an extension of service pursuant to Sections 8.2.1 or 8.2.2 shall be accomplished within one hundred twenty (120) days after the owner's execution of any necessary easement documents and/or capital contribution agreements.

9. **Service Drops.**

9.1. **Standard Drop.** Licensee shall make Cable Service available to any single family residence or any commercial establishment within the City at the standard connection charge if the connection requires a Standard Drop.

9.2. **Non-Standard Drop.** If making Cable Service available requires more than a Standard Drop. Licensee will not be required to make such Cable Service available unless the Person requesting such Cable Service pays to Licensee the standard connection charge and an amount equal to the reasonable, actual labor and material costs incurred by Licensee for the additional facilities and work beyond the Standard Drop.

9.3. **Bulk Billing.** Licensee may offer bulk billing service, but may not require a bulk billing agreement as a condition of providing service, when the Person requesting service pays to Licensee the applicable amount(s) set forth in Section 9.2.

9.4. **Timing.**

9.4.1. Absent a showing by Licensee to the City Manager of unusual circumstances, including without limitation Public Street crossings, (i) any Standard Drop to a single family residence or dwelling shall be accomplished within ten (10) days of the request for service and (ii) any drop that is not a Standard Drop shall be accomplished within twenty (20) days of such request. When a drop requires a line extension to a residence, the extension shall be accomplished in the time provided in Section 8.1 above.

9.4.2. Absent a showing by Licensee to the City Manager of unusual circumstances, including without limitation Public Street crossings, (i) any Standard Drop to a commercial establishment shall be accomplished within ten (10) days after the owner of such commercial establishment executes any necessary easement documents and capital contribution agreements, and (ii) any commercial drop that is not a Standard Drop shall be accomplished within twenty (20) days after the owner's execution of any necessary easement documents and/or capital contribution agreements. When a drop requires a line extension to a commercial establishment, the extension shall be accomplished in the time provided in Section 8.2 above.

10. **Construction Requirements.**

10.1. **Construction and Technical Standards.**

10.1.1. Licensee shall construct, install, operate, and maintain its system in a manner such that it operates at all times consistent with all laws, the construction standards of the City, and the FCC Rules and Regulations, Part 76 SubPart K (Technical Standards), as amended from time to time. In addition, the City may at any time conduct independent measurements of the Cable System.

10.1.2. Construction, installation, and maintenance of a Cable System shall be performed in an orderly and professional manner. All cables and wires shall be installed, where possible, parallel with and in a manner similar to the installation of

electric and telephone lines. Multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering considerations. Installations shall be in conformance with all applicable codes. The Cable System shall include equipment capable of providing stand-by power. The equipment shall be so constructed as to automatically revert to the stand-by mode when the electrical utility power returns. Licensee must at all time comply with applicable sections of:

10.1.2.1. National Electrical Safety Code (ANSI)C2-1990;

10.1.2.2. National Electrical Code (National Bureau of Fire Underwriters);

10.1.2.3. the Uniform Building Code as may be adopted and amended by the City, together with applicable portions of all other Uniform Codes, as may be adopted and amended by the City, promulgated by the International Conference of Building Officials;

10.1.2.4. City Zoning Code and Subdivision Regulations, all as from time to time amended and revised, and all other applicable rules and regulations now in effect or hereinafter adopted by the City; and

10.1.2.5. the Maricopa Association of Governments Uniform Standard Specifications for Public Works Construction including the latest City supplement thereto.

10.2. Utility Locating System. License shall participate in the regional one-call utility locating system (Blue Stake).

10.3. Resident Notification of Construction Activity Required. Licensee shall provide reasonable advance notice to all affected residents before system construction crews enter the right-of-way adjacent to their property; provided that Licensee shall not be required to provide such notice in emergencies or for normal system repair and maintenance work.

11. Emergency Service. In accordance with the provisions of FCC Rules and Regulations Part 11, Subpart D, Section 11.51(h)(1), as they may from time to time be amended, Licensee shall install and maintain an Emergency Alert System and shall transmit all Emergency Act Notifications and Emergency Act Terminations relating to local and state-wide situations as may be designated to be an emergency by the Local Primary, the State Primary and/or the State Emergency Operations Center, as those authorities are identified and defined within FCC Rules and Regulations, Part 11.

12. Use of Public Streets.

12.1. Location of Licensee's Property. Any poles, wires, cable lines, conduits, or other properties of Licensee to be constructed or installed in Public Streets shall be so constructed or installed only at such locations and in such manner approved by the City consistent with the City's technical and permitting regulations. Licensee or its authorized contractors will obtain any

required permits before any physical work is done in the City's rights-of-way or on City-owned property.

12.2. Undergrounding.

12.2.1. Unless otherwise provided in this License, all new Licensee facilities in the Public Streets or in any public or private easement shall be located in accordance with the City's subdivision requirements, as they may be amended from time to time. Nothing contained in this Section requires Licensee to construct, operate, and maintain underground any ground-mounted appurtenances such as Subscriber taps, line extenders, system passive devices (splitters, directional couplers), amplifiers, stand-by and other power supplies, network reliability units, pedestals, or other related equipment.

12.2.2. If Licensee extends new service into an area that already has available overhead utility poles, then Licensee may use such poles for its facilities, subject to agreement with the pole owner. No underground facilities may be moved to poles. Licensee may not install any poles. Licensee's existing overhead facilities may remain on poles subject to the requirements of Section 12.2.3 below.

12.2.3. Licensee's aerial facilities shall be placed underground as set forth below.

12.2.3.1. Where aerial facilities of other utilities in the same span are placed underground at the cost of such other utility, Licensee shall concurrently (or earlier) place its existing aerial facilities underground at its own expense.

12.2.3.2. Where aerial facilities of other utilities in the same span are placed underground at the cost of the City or a third party, such as a developer, Licensee shall concurrently (or earlier) place its existing overhead facilities underground only if (a) the cost of such undergrounding is paid by the City or such third party and (b) Licensee receives timely notification of the undergrounding of such other utility lines and opportunity to participate in joint trench with such other utility(ies). In the event that Licensee is not notified and given reasonable opportunity to participate in a joint trench with other utility(ies), Licensee will not be required to place its facilities underground at a later date unless the cost of such undergrounding in excess of the cost to participate in the joint trench is borne by the entity charged with providing Licensee notice of the joint trench opportunity.

12.2.4. The City shall provide Licensee with notice of the issuance of building or development permits for planned commercial/residential developments within the City requiring undergrounding of cable facilities. The City shall require as a condition of issuing any permit for open trenching to any utility or developer, that the utility or developer give Licensee reasonable access to open trenches for deployment of cable facilities and written notice of the date of availability of trenches. Such notice must be received by Licensee at least ten (10) business days before availability.

12.2.5. All new underground wires or cable placed by Licensee after the effective date of this License shall be placed in conduit except for service drops.

12.3. Emergency Work. The City reserves the right to move any portion of Licensee's equipment and facilities as may be required in any emergency as determined by the City without liability for interruption of Cable Service. However, before taking any action pursuant to this Section, the City shall provide, whenever feasible, reasonable notice to Licensee of the emergency to allow Licensee the opportunity to protect and repair Licensee's facilities involved in the emergency.

12.4. Temporary Removal for Building Improvements. Licensee, on the written request of any Person holding a building moving permit issued by the City, shall temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, raising, or lowering of wires shall be paid to Licensee by the Person requesting the same, and Licensee shall have the authority to require such payment in advance. Licensee shall be given not less than forty-eight hours advance notice to arrange for such temporary wire changes.

12.5. Changes Required by Public Improvements. Licensee shall from time to time protect, support, temporarily dislocate, temporarily or permanently, as may be required, remove or relocate, any facilities installed, used, or maintained under this License, if and when (a) made necessary by any lawful change of grade, alignment, or width of any Public Street, by the City or (b) made necessary by any City improvement or alteration in, under, on, upon, or about any Public Street, when such improvement or alteration is being conducted by the City for a governmental purpose or is made necessary by traffic conditions, public safety, Public Street vacation, or any other public project or purpose by the City. Such removal or relocation shall be paid for by Licensee; provided, however, that Licensee shall have substantially the same obligations with respect to the cost of such relocation as all other users of the public rights-of-way. If any portion of the removal or relocation costs of other users of the public rights-of-way is being borne by a third party, the City will use its best efforts to work with Licensee and such third party to ensure that the third party bears the cost of removal or relocation of Licensee's facilities to the same extent that it is covering such costs of removal or relocation of the facilities of other users of the right-of-way. To the extent that public funds are available to compensate utilities and other affected rights-of-way users for the costs of such location, Licensee shall be entitled to receive such funds on an equal basis with all other utilities and users.

12.6. Notification to Licensee. In an effort to alert Licensee to all potential areas where Licensee's facilities may be installed, the City shall include Licensee as a "check-off" participant in the permitting process and on all relevant permits or other forms that will provide developers or contractors with notice to contact Licensee and provide Licensee the opportunity to participate in joint trench or joint facility placement opportunities.

12.7. Street Repair. If Licensee causes damage to pavement, sidewalks, driveways, landscaping, or other property during construction, installation, or repair of its facilities, Licensee or its authorized agent shall replace and restore such places as nearly as may be possible to the condition that existed before the damage occurred. All repair and restoration necessary to meet

the requirements set forth in this Section shall be at Licensee's expense and in a manner acceptable to the City.

12.8. Permitting.

12.8.1. For all permit applied for by Licensee, the City agrees to act timely and in any event in accordance with any timelines established by the City for permit issuance. Where changes are identified by Licensee after the issuance of a permit and during the construction phase, Licensee shall apply for a permit revision if required by the City; provided, however, that upon the approval of the City inspector Licensee may continue construction while waiting for approval of the revised permit.

12.8.2. Automatically, upon the Effective Date of this License the City shall grant to Licensee a maintenance permit for a period of one year. This maintenance permit shall cover Licensee's access to its existing facilities within the License Area for the performance of work by Licensee where no excavation is involved. Work covered by this annual maintenance permit would include, but not be limited to, splicing in existing vaults, installation of underground cables in existing conduit structure, access to aerial facilities including maintenance, repair, replacement of existing cable, aerial splicing, and the placement of new aerial cable and strand in accordance with the terms of this License. While performing work under this maintenance permit, Licensee shall comply with all requirements of the City regarding traffic control, notice to the City, and related matters. This annual maintenance permit shall be automatically renewed on each anniversary of the Effective Date of this License.

12.8.3. Automatically, upon the Effective Date of this License the City shall grant to Licensee an emergency permit covering Licensee's access to its existing facilities within the License Area in order to perform work necessary for the repair of major outages affecting Cable Services. While performing work under this maintenance permit, Licensee shall comply with all requirements of the City regarding traffic control, notice to the City, and related matters. This emergency permit shall be automatically renewed on each anniversary of the Effective Date of this License.

13. Subscriber Service Provisions.

13.1. Subscriber Service Standards. Licensee shall at all times satisfy FCC customer service standards, as amended from time to time by the FCC. A copy of the current FCC customer service standards is attached hereto as Exhibit A.

13.2. Billing Practices. Licensee shall bill all Subscribers to its Cable System in a uniform manner, regardless of a Subscriber's level of service. In no case may any Subscriber be billed for service more than thirty (30) days before receipt of such service. Payment may be due no sooner than the fifteenth (15th) day of each billing period, and the due date shall be listed on each bill. Bills shall be mailed no later than the first (1st) day of the billing period.

13.3. Subscriber Complaint Procedures. Licensee shall comply with the following Subscriber Complaint procedures.

13.3.1. Licensee shall ensure that all Subscribers have recourse to a satisfactory process to submit complaints. Licensee shall respond to all Subscriber Complaints within a reasonable time. Licensee shall follow a written internal appeal procedure for disputes over Subscriber Complaints.

13.3.2. Licensee shall establish and maintain a written log listing all Subscriber Complaints. The written log shall include the name and telephone number, if given, of the Subscriber making the complaint and Licensee's action on the complaint. The log shall be maintained by Licensee for three years and, to the extent permitted by federal law, shall be available to the City Manager and the public for inspection upon request during Licensee's Normal Business Hours.

13.3.3. Licensee shall provide, in writing, upon request of the City Manager, details from its written log relating to any Subscriber Complaint.

13.4. Subscriber Solicitation Procedures.

13.4.1. All Licensee personnel, agents, and representatives, including subcontractors, shall wear a cable uniform or clearly display a photo-identification badge when acting on behalf of Licensee in the City.

13.4.2. Licensee shall afford each Subscriber of the Cable System a three (3)-day right of rescission for ordering installation of Cable Service from the Cable System provided that such right of rescission will end when physical installation of Cable System equipment on such Subscriber's premises begins.

13.5. Disconnection and Termination of Cable Services. Licensee shall only disconnect or terminate a Subscriber's Cable Service for good and just cause. In no event may Licensee disconnect Cable Service for nonpayment without prior written notification to the affected Subscriber at least seven (7) days before such disconnection or termination. In no event may such disconnection or termination for nonpayment occur in less than thirty (30) days after a Subscriber's failure to pay a bill when due. If Licensee improperly discontinues Cable Service to any such Subscriber, upon request it shall provide free reconnection to the Cable System to such Subscriber.

13.6. Rights of Individuals. Licensee may not deny Cable Service, deny access, or otherwise discriminate against Subscribers, channel users, or general citizens on the basis of race, color, religion, national origin, sex, age, or disability; provided, however, that Licensee may not be required to provide Cable Services to any Person who does not pay the applicable line extension connection fee, fees for drops in excess of Standard Drops, and/or Cable Service charge(s). Licensee shall comply at all times with all other applicable federal, state, and local laws and regulations, as amended from time to time, relating to nondiscrimination.

14. Inspection of Records.

14.1. Inspection of Records. At all reasonable times as related to determination of License compliance, Licensee shall permit any duly authorized representative of the City to

examine any and all financial records kept or maintained by Licensee or under its control that reasonably relate to Licensee's accurate payment of License Fees.

14.2. **Scope of Information.** Unless otherwise specified, all of Licensee's recordkeeping and disclosure obligations include and are limited to information that reasonably relate to Licensee's accurate payment of License Fees. This does not include personally identifiable Subscriber information without the Subscriber's consent in violation of Section 631 of the Cable Communications Policy Act of 1984, as amended, 47 U.S.C. Section 551.

14.3. **Maps.** Licensee shall at all times make and keep full and complete plans and records showing the exact location of all Cable System equipment installed or in use in Public Streets, and other places in the City and make them available to the City for review upon request. Upon request, Licensee shall provide the City Manager route maps or sets of maps drawn to scale, showing the location of Licensee's underground and above ground facilities.

15. **Indemnification.**

15.1. **Indemnification.** Licensee agrees to defend, indemnify, and hold harmless the City, its officers, boards, and employees, for, from, and against (i) any liability for damages that arise out of Licensee's construction, operation, or maintenance of its Cable System and (ii) any liability or claims resulting from property damage or bodily injury (including accidental death) that arise out of Licensee's construction, operation, or maintenance of its Cable System, including, but not limited to, reasonable attorneys' fees and costs. Notwithstanding the foregoing, Licensee shall not indemnify the City for any damages, liability, or claims resulting from the willful misconduct or negligence of the City.

15.2. **Procedure.** In the event that a third-party claim is made or third-party suit is filed for which the City intends to seek indemnification from Licensee pursuant to Section 16.1 above, the City shall promptly notify Licensee of said claim or suit. Licensee shall have the right to control, through counsel of its choosing, the defense of such third-party claim or suit, but may compromise or settle the same only with the consent of the City, which consent shall not be unreasonably withheld. The City shall cooperate with Licensee and its counsel in the defense of any such claim or suit and shall make available to Licensee any books, records or other documents necessary or appropriate for such defense. The City shall have the right to participate at its expense in the defense of any such claim or suit through counsel of its own choosing.

16. **Insurance.** Licensee shall maintain in full force and effect, at no cost and expense to the City, during the term of this License, commercial general liability insurance in the amount of three million dollars combined single limit for bodily injury and property damage. The City shall be designated as an additional insured. Such insurance will not be cancelable except upon thirty (30) days prior written notice to the City. Upon written request, Licensee shall provide a certificate of insurance showing evidence of the coverage required by this Section. Licensee may self-insure the above-described policy coverages if Licensee or its parent is of sufficient financial standing to provide such insurance.

17. **Letter of Credit.**

17.1. **Amount; Purpose.** Within thirty (30) days after the effective date of this License, Licensee shall deposit with the City an irrevocable letter of credit in an amount not to exceed ten thousand dollars (replenishable as specified in Section 17.3 below) issued by a federally insured commercial lending institution. The form and substance of said letter of credit will be used to assure (a) the faithful performance by Licensee of all provisions of this License; (b) compliance with all orders, permits, and directions of any agency, commission, board, department, division, or office of the City having jurisdiction over Licensee's acts or defaults under this License; and (c) Licensee's payment of any penalties, liquidated damages, claims, liens, and taxes due to the City that arise by reason of the construction, operation, or maintenance of the Cable System, including cost of removal or abandonment of any of Licensee's property.

17.2. **Drawing on Letter of Credit.** The letter of credit may be drawn upon by the City by presentation of a draft at sight on the lending institution, accompanied by a written certificate signed by the City Manager certifying that Licensee has been found, pursuant to Sections 19 through 22 below, to have failed to comply with this License, stating the nature of noncompliance, and stating the amount being drawn. The rights reserved to the City with respect to the letter of credit are in addition to all other rights of the City, whether reserved by this License or authorized by law, and no action proceeding against a letter of credit will affect any other right the City may have.

17.3. **Replenishing.** The letter of credit shall be structured in the matter provided for in Section 6-83(c) of the Peoria City Code.

18. **Notice of Violation; Right to Cure or Respond.** In the event that the City believes that Licensee has not complied with the terms of this License, the City shall informally discuss the matter with Licensee. If these discussions do not lead to resolution of the issue, the City shall notify Licensee in writing of the exact nature of the alleged noncompliance. Licensee shall have thirty (30) days from receipt of the notice of violation: (a) to respond to the City, contesting the assertion of noncompliance; (b) to cure such default; or (c) if, by the nature of default, such default cannot be cured within the thirty (30)-day period, initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected date that they will be completed.

19. **Public Hearing.**

19.1. **Scheduling; Notice.** If Licensee fails to respond to the notice described in Section 18 pursuant to the procedures set forth therein, or if the alleged default is not cured within thirty (30) days after the date projected pursuant to Section 18(c) above, if it intends to continue its assertion of, and investigation into, the alleged default, then the City shall schedule a public hearing to investigate the default. The City shall provide Licensee at least ten (10) days' prior written notice of such hearing, which notice shall specify the time, place and purpose of such hearing. At such hearing, Licensee shall be afforded full due process, including without limitation an opportunity to be heard, to present evidence, to require the production of evidence, to question witnesses, and to obtain a transcript of the proceeding.

19.2. Contesting an Audit. Within fifteen (15) days after notice from Licensee that it contests an audit determination of License Fees under Section 3.5.2, the City Manager shall schedule an administrative hearing. This shall be a public hearing, and Licensee shall be afforded full due process of law, including, without limitation, an opportunity to be heard, to present evidence, and to cross examine witnesses. Within fifteen (15) days after the conclusion of such hearing, the City shall issue a determination.

20. Enforcement. Subject to applicable federal and state law, if, after the hearing set forth in Section 19, the City determines that Licensee is in default of any provision of this License, the City may (a) seek specific performance of any provision that reasonably lends itself to such remedy, as an alternative to damages; (b) commence an action at law for monetary damages or seek other equitable relief; (c) in the case of a substantial default of a material provision of the License, seek to revoke the License in accordance with Section 21. Licensee may appeal such determination of the City to an appropriate court, which shall have the power to review the decision of the City de novo if such review is within the jurisdiction of the court.

21. Revocation.

21.1. Notice; Response. If the City seeks to revoke this License after complying with the procedures set forth in Sections 18 through 20 above, the City shall give written notice to Licensee of its intent to revoke this License on the basis of a pattern of noncompliance by Licensee, which must include one or more instances of substantial noncompliance with a material provision of this License. The notice shall set forth the exact nature of the noncompliance. Licensee shall have thirty (30) days from such notice to object in writing and to state its reasons for such objection. If the City does not receive a satisfactory response from Licensee, it may then seek termination of this License at a public hearing. The City shall cause to be served upon Licensee, at least fifteen (15) days before such public hearing, a written notice setting forth the time and place of such hearing and stating its intent to revoke this License.

21.2. Hearing. At the designated hearing, the City shall afford Licensee full due process, including without limitation an opportunity to be heard, to present evidence, to require the production of evidence, to question witnesses, and to obtain a transcript of the proceeding, after which the City shall determine whether or not this License will be revoked.

21.3. Other Action. The City may, at its sole discretion, take any lawful action that it deems appropriate to enforce the City's rights under this License in lieu of revocation of this License.

21.4. Appeal. Licensee may appeal any determination of the City to an appropriate court, which shall have the power to review the decision of the City de novo to the extent that such review is within the jurisdiction and authority of the court under the Cable Act and other applicable law.

22. Effect of Expiration, Revocation or Termination of License.

22.1. Continuity of Service. It is the right of all Subscribers to continue receiving Cable Service as long as their financial and other obligations to Licensee are honored. If this License expires or terminates, Licensee shall cooperate with the City to ensure continuity of

Cable Service to all Subscribers for a period not to exceed ninety (90) days. Said period may be extended by written agreement between the City and Licensee. During such period, Licensee shall be entitled to the revenues for operating the Cable System.

22.2. Other Services. Upon expiration, revocation, or termination of this License for any reason, Licensee shall have one hundred eighty (180) days from the date of expiration, revocation, or termination to enter into good faith negotiations with the City or other governmental authority to obtain a license, permit, or other approval or agreement that may then lawfully be required in order to allow Licensee to continue using Licensee's facilities in the Public Streets for any lawful service other than Cable Service that Licensee may then provide over its facilities in the License Area.

22.3. Holding Over. In any circumstance whereby Licensee would continue to occupy the Public Streets after the expiration of this Agreement, such holding over shall be deemed to operate as a renewal or extension of this Agreement on a month-to-month basis that may be terminated at any time by the City upon sixty (60) days' written notice to Licensee, or by Licensee upon sixty (60) days' written notice to the City.

23. Transfer.

23.1. Prior Consent.

23.1.1. Except as otherwise set forth below, Licensee's right, title, or interest in this License may not be sold, transferred, assigned, or otherwise encumbered, other than to an entity controlling, controlled by, or under common control with Licensee, without the prior consent of the City, such consent not to be unreasonably withheld. No consent is required for (a) a transfer to an entity controlling, controlled by, or under common control with Licensee or (b) a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of Licensee in the License or Cable System in order to secure indebtedness.

23.1.2. Within thirty (30) days after receiving request for consent to a transfer for which City consent is required, the City shall notify Licensee in writing of any additional information it reasonably requires to determine the legal, financial, and technical qualifications of the transferee. If the City has not taken action on Licensee's request for transfer within one hundred twenty (120) days after receiving such request, consent by the City will be deemed given.

23.2. Grant, Rent, or Lease. As long as a grant, rent, or lease of all or a portion of the Cable System does not amount to a transfer, Licensee in the normal course of providing Cable Services or other telecommunication services may grant, rent, or lease use of the Cable System to other Persons. Any such use shall be restricted to and consistent with such uses as Licensee is authorized in this License or under other applicable law. Any such use shall be in compliance with applicable federal and state law. No such grant, lease, or rent by Licensee will, however, relieve Licensee of any requirement or obligation under this License as to its use of the Public Streets.

24. **Controlling Authorities.**

24.1. **Local Ordinances.** Licensee agrees to comply with the terms of any lawfully adopted generally applicable local ordinance, to the extent that the provisions of the ordinance do not have the effect of limiting the benefits or expanding the obligations placed upon Licensee that are contained in this License. In the event of a conflict between any ordinance or City Code provision and this License, this License shall control.

24.2. **Federal and State Laws.** This License is subject to and shall be governed by all requirements of the Cable Act: Arizona Revised Statutes Sections 9-505 through 9-510, as amended; and other federal and state laws and regulations governing cable communications. In a conflict between the terms and conditions of this License and the terms and conditions on which the City can grant a license, federal and state law shall control.

25. **Licensee's Representations and Warranties.**

25.1. **Authority.** Licensee represents and warrants that it has the power and authority to enter into this License by and through the representative who has signed this License on its behalf, and that it has the power and ability to do all the acts required of it by this License.

25.2. **Misrepresentation.** Licensee has not misrepresented or omitted material facts, has not accepted this License with intent to act contrary to the provisions herein, and represents and warrants that, as long as it operates the Cable System, it will be bound by the terms and conditions of this License or a subsequently issued license.

25.3. **Attorneys.** Licensee further acknowledges that it was represented throughout the negotiations of this License by its own attorneys and had opportunity to consult with its own attorneys about its rights and obligations regarding this License.

26. **Confidentiality.**

26.1. **Protection of Confidential Information.** To the fullest extent permitted by law, the City agrees to treat on a confidential basis any Confidential Information disclosed by Licensee to the City. The City shall not use the Confidential Information for any purpose whatsoever other than in connection with its rights and obligations under this License. The City shall safeguard the Confidential Information using measures that are equal to the measures used to safeguard its own confidential information of comparable value, but in no event less than reasonable care.

26.2. **Disclosure to Representatives.** Disclosure of Licensee's Confidential Information by the City shall be limited to only those of its employees, representatives, or agents that have a need to know, and that are in a confidential relationship with the City, who are informed by the City of the confidential nature of the Confidential Information, and who agree to act in accordance with the terms and conditions of this Section.

26.3. **Disclosure Required by Law.** In the event that the City becomes legally compelled to disclose any of the Confidential Information, the City shall provide Licensee with prompt notice so that Licensee may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Section. In the event that such protective order or

other remedy is not obtained, or that Licensee waives compliance with the provisions of this Section, the City shall furnish only that portion of the Confidential Information that the City is advised by opinion of counsel is legally required and the City shall exercise its best efforts to obtain reliable assurance that confidential treatment shall be accorded the Confidential Information by the person to whom it is disclosed.

27. **Miscellaneous.**

27.1. **Filings.** When not otherwise prescribed herein, all matters herein required to be filed with the City shall be filed with the office of the City Clerk.

27.2. **Force Majeure.**

27.2.1. Licensee shall not be held in default under, or in noncompliance with, the provisions of this License, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation, or revocation of this License) where such alleged noncompliance or default occurred or was caused by an act of God, an act or omission of governmental military or civilian authority, strike or lockout, riot, epidemic or quarantine, war, earthquake, fire, flood, tidal wave, unusually severe rain, wind, or snow storm, hurricane, tornado or other catastrophic act of nature, labor disputes, terrorist acts, governmental, administrative or judicial order or regulation or other circumstances that could not have been avoided through Licensee's exercise of reasonable care, prudence and diligence. This provision includes work delays caused by waiting for utility providers to service or monitor their own above-ground or underground facilities to which Licensee's Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

27.2.2. Furthermore, the parties hereby agree that it is not the City's intention to subject Licensee to penalties, fines, forfeitures, or revocation of the License for so-called "technical" breach(es) or violation(s) of this License, which include but are not limited to the following: (i) in instances or for matters where a violation or a breach by Licensee of the License was good faith error that resulted in no or minimal negative impact on the Subscribers within the License Area or (ii) where strict performance with the terms of the License would result in practical difficulties and hardship to Licensee that outweigh the benefit to be derived by the City and/or Subscribers.

27.3. **Severability.** If any Section, sentence, paragraph, term, or provision of this License or any ordinance, regulation, law, or document incorporated herein by reference is held to be illegal, invalid, unconstitutional, or unenforceable, by the decision of any court of competent jurisdiction, such decision will not affect the validity of the remaining portions hereof all of which shall remain in full force and effect for the term of this License.

27.4. **Notice.** Unless otherwise provided for in this License, all notices to be given hereunder shall be given in writing and may be hand delivered or given by certified first class mail, postage prepaid addressed to the parties at the addresses set forth below. Such notices will be deemed served and effective when delivered to the designated persons listed below during

ordinary business hours or on the date of delivery by U.S. Mail registered or certified return receipt requested.

To Licensee:	CoxCom. Inc. 1550 West Deer Valley Road Building C Phoenix, Arizona 85027 Attn: VP & Region Manager
With a copy, which is not notice, to:	Cox Communications, Inc. 1400 Lake Hearn Drive Atlanta, Georgia 30319 Attn: Legal Department
To the City:	City of Peoria 8401 West Monroe Street Peoria, Arizona 85345 Attn: City Manager
With a copy, which is not notice, to:	City of Peoria 8401 West Monroe Street Peoria, Arizona 85345 Attn: City Attorney

27.5. Governing Law; Venue. The provisions of this License are subject to applicable federal law, including but not limited to the Cable Act and the rules, regulations, and orders of the FCC, and are also subject to state law not in conflict with such federal law. In the event of any conflict between the provisions of this License and such state or federal law, the provisions of such state or federal law shall prevail. Proper venue is in the Superior Court of Maricopa County or the United States District Court for the District of Arizona.

27.6. Headings. The headings contained herein are intended solely to facilitate the reading thereof. Such headings shall not affect the meaning or interpretation of the text herein.

27.7. Integration; Acquired Licenses. This License constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior agreement, understanding, negotiation, drafts, discussion outlines, correspondence, memoranda, or otherwise regarding the subject matter hereof. This License hereby preempts and cancels any other license agreements granted by the City that are acquired by Licensee through the purchase or acquisition of other Cable Systems and/or cable operators. Upon completion of an acquisition the terms of this License shall govern Licensee's newly acquired Cable System(s) or cable operation(s).

IN WITNESS WHEREOF, the parties have executed this License on the day and year first written above to be effective July 1, 2010.

CITY OF PEORIA

By: _____
Bob Barrett, Mayor

ATTEST:

Mary Jo Waddell, City Clerk

APPROVED AS TO FORM:

Steve Kemp, City Attorney

COXCOM, INC., a Delaware corporation

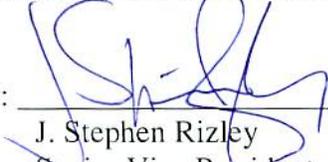
By: _____

J. Stephen Rizley
Senior Vice President and General
Manager – Arizona

Exhibit A

CFR 76.309
TITLE 47 -- TELECOMMUNICATION
CHAPTER I -- FEDERAL COMMUNICATIONS COMMISSION
SUBCHAPTER C -- BROADCAST RADIO SERVICES
PART 76 -- MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE
SUBPART H -- GENERAL OPERATING REQUIREMENTS

§ 76.309 Customer service obligations.

(a) A cable franchise authority may enforce the customer service standards set forth in paragraph (c) of this section against cable operators. The franchise authority must provide affected cable operators ninety (90) days written notice of its intent to enforce the standards.

(b) Nothing in this rule should be construed to prevent or prohibit:

(1) A franchising authority and a cable operator from agreeing to customer service requirements that exceed the standards set forth in paragraph (c) of this section;

(2) A franchising authority from enforcing, through the end of the franchise term, pre-existing customer service requirements that exceed the standards set forth in paragraph (c) of this section and are contained in current franchise agreements;

(3) Any State or any franchising authority from enacting or enforcing any consumer protection law, to the extent not specifically preempted herein; or

(4) The establishment or enforcement of any State or municipal law or regulation concerning customer service that imposes customer service requirements that exceed, or address matters not addressed by the standards set forth in paragraph (c) of this section.

(c) Effective July 1, 1993, a cable operator shall be subject to the following customer service standards:

(1) Cable system office hours and telephone availability --

(i) The cable operator will maintain a local, toll-free or collect call telephone access line which will be available to its subscribers 24 hours a day, seven days a week.

(A) Trained company representatives will be available to respond to customer telephone inquiries during normal business hours.

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

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

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

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

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

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

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

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

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

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

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

(3) Communications between cable operators and cable subscribers --

(i) Refunds -- Refund checks will be issued promptly, but no later than either --

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

(B) The return of the equipment supplied by the cable operator if service is terminated.

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

(4) Definitions --

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

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

(iii) Service interruption -- The term "service interruption" means the loss of picture or sound on one or more cable channels.

HISTORY: [58 FR 21109, Apr. 19, 1993; 61 FR 18968, 18977, April 30, 1996; 65 FR 53610, 53615, Sept. 5, 2000; 67 FR 1649, 1650, Jan. 14, 2002]