



**CITY OF TRINIDAD  
TRINIDAD, COLORADO**

The City Council of the City of Trinidad, Colorado,  
will hold its regular Work Session on Tuesday, March 25, 2014  
immediately following a Special Meeting at 1:00 P.M.  
in City Council Chambers at City Hall, Third Floor, City Hall

**AGENDA**

1. Petitions and Communications, Oral or Written
2. Discussion of development of a business incentive program
3. Discussion of ordinance providing for the control of cross-connections in order to prevent backflow and protect the city's water supply system from contamination
4. Consideration of an ordinance adjusting the City of Trinidad Landfill rates
5. Consideration of Comcast Franchise Agreement renewal
6. Work Agreement with THK for the Trail & Greenway Master Plan
7. Consideration of contract for the Trinidad Downtown Improvements: Commercial Street Phase II project
8. Discussion of other agenda items

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**CITY OF TRINIDAD, COLORADO**  
1876

## Council Communication

City Council Work Session: March 25, 2014  
Prepared: March 20, 2014  
Dept. Head Signature: *Tom Acre*  
# of Attachments: 1

**SUBJECT:** Discussion on Development of a Business Incentive Plan

**Presenter:** Tom Acre, City Manager

**Recommended City Council Action:** No formal City Council action is requested or required at this time. Staff is presenting information for City Council for input into a formal plan and process for consideration at a subsequent City Council Meeting.

**Summary Statement:** City Council under Section 12.7 of the Home Rule Charter is to encourage economic development by providing inducement packages to businesses seeking to establish, locate or relocate in Trinidad. Business incentives can include both financial and non-financial incentives. Non-financial incentives or factors that can attract businesses to communities are a stable government, consistent application of codes and standards, predictable engagement with the administration, quick turnaround on review of submittals, good quality schools, and access to health care and quality of life amenities such as parks, trails, and other recreational amenities. Financial incentives are often considered the “icing on the cake” and can seal the deal.

The goal of the incentive program is to:

- Positively impact all facets of the City of Trinidad Economy
- Create jobs
- Encourage existing businesses to make new capital investment
- Spur new development and growth; including retail/commercial, industrial, professional office, and residential
- Encourage new opportunities for people to visit, work, live and recreate in Trinidad and the surrounding area
- Create new business opportunities
- Grow the City’s and the Region’s target industry sectors (these need to be defined)

While economic development has been encouraged by the City in working with the Trinidad-Las Animas County Economic Development Corporation (TLACEDC), TLACEDC is not in the position to offer financial incentives and looks for the City to fulfill this role.

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As has been previously discussed the City collects various fees for building permits, tap/connection fees, plant investment fees, and sales taxes. A financial incentive based on the collection and rebate of fees and taxes collected is a common method of assisting businesses. This can be done when one considers that if the business was not locating here or doing a significant improvement to an existing business, the City would not see these revenues.

Examples of financial incentives that we can consider include

- A rebate of sales and use tax remitted to the City for the specific improvement
- A rebate of fees collected by the City for the specific improvement such as building permit and plan review fees
- Additional percentage of fees rebated if Trinidad businesses are used for making the improvement.
- Additional tax rebates (potentially work with County) based on the number of jobs created by the new business or expansion of an existing business that is above the county average wage (must be county resident), with an increase if the job is created for a City of Trinidad resident.
- Property tax rebate of a portion of the increased property tax if it can be demonstrated that property value will increase.
- A discount or rebate on the amount of the fees collected for tap/connection fees for utility connections.
- A revolving loan fund program to install or upgrade utilities to commercial and/or historical buildings

In order for businesses to be eligible for the business incentives certain criteria would need to be met, such as:

- Number of jobs created and the salary level and how fast are they created
- Are they a targeted business or industry and/or are they located in an area such as the historic district and they are converting an vacant building into a productive space
- The business incentive should be applied for prior to making the capital investment, which could include prior to acquiring a property or leasing a space.
- Businesses applying for an incentive may need to provide a business plan and financial records to demonstrate it will be a viable business
- Businesses would be subject to an audit after a set period or milestones such as when the commitment to create jobs was reached
- Rebates would be made on a set schedule and would not be greater than what has been collected by the City
- Rebates may be required to be put into the project as an enhancement that would not otherwise be done.

In addition to business incentives described above, the City may want to consider an incentive program that is related to one particular sector, such as the renovation of historic buildings. Attached to this communication is an example of the program that is used by the City of Victor.

**Expenditure Required:**        None at this time

**Source of Funds:** N/A

**Policy Issue:** Offering Economic Development Incentive Package(s).

**Alternative:** City Council could provide direction to staff to seek other alternatives or to discuss this at a later time.

**Background Information:** See summary statement and attachment.



# *City of Victor, Colorado*

## **Economic Development-Downtown Revitalization Policy**

Adopted: January 17, 2013

Amended:

## City of Victor

### Economic Development and Downtown Revitalization Incentives Policy

In order to encourage and promote ongoing new development, rehabilitation of historic commercial structures and to provide for expansion and or retention of existing businesses, the City of Victor presents and states the following purpose, guidelines and policy for providing incentives and opportunities to and for commercial property development within the City.

The purpose for the incentives and opportunities will be to insure the creation of new jobs or retention of existing jobs; improvement of property values; increases in sales taxes; significant contribution to protecting historic structures; continued enhancement of public safety and public works; improvement of the quality of life such as improved aesthetics, health, general welfare; increased redevelopment of underused buildings and sites; increased rehabilitation, upgrade, and adaptive reuse of existing buildings and increased business recruitment and expansion in the City's targeted industries. ***It is the City's intent to minimize the use of main level storefronts in the downtown area for residential use. Only those commercial buildings that provide main level downtown commercial storefront businesses (i.e. retail, office, restaurants, financial institutions, etc) are eligible.***

#### CRITERIA FOR PROVIDING INCENTIVES

The following criteria will be considered in determining what level of incentives will be considered. Incentive packages will be evaluated based on the level of achievement of the following criteria:

1. Expansion of the local tax base.
2. Creation of permanent employment opportunities. The number and types of jobs to be created or retained (full or part-time) and whether or not benefits for employees will be provided.
3. Whether City utilities will be used.
4. Whether the applicant will use local suppliers, contractors and labor force.
5. The types and out-of-pocket cost of public improvements (streets, water, wastewater) and services (police) which will be required of the City.
6. The types and value of public improvements which will be made by the applicant.
7. The financial capacity of the applicant to undertake and complete the proposed project.
8. The extent to which the proposed project will make use of local contractors, suppliers and labor force during construction and during operations.
9. Provides a new, highly desired and needed or necessary service or product.
10. Appropriate type of activity for the designated zoning.
11. The amount of time necessary to complete the project and create the jobs which are to be provided by the applicant.
12. The extent to which the proposed project carries out the goals and objectives of the City's Comprehensive Plan.
13. A comprehensive analysis of the costs of the incentives requested to the benefits provided to the City by the applicant's development or expansion.

14. Other incentive programs for which the applicant has applied or is qualified.
15. Any other factors that the City Council finds helpful and relevant to accomplishing the City's economic development objectives.

**The Applicant (commercial property owners) may be required to:**

- provide a feasibility study; traffic study and/or any other relevant information that will allow the City to make an informed decision,
- submit financial information regarding the project,
- make a minimum investment in the property or business of \$75,000,
- complete improvements within eighteen (18) months of approval of the incentive agreement, and
- conform to the requirements of the City's Comprehensive Plan and other plans and ordinances.

**The City should:**

- conduct a cost benefits analysis,
- insure a return on investment (ROI) to the public,
- insure the purpose has been or will be fulfilled,
- insure wages are at or above the current average wage rate for the community,
- determine if this development stops one form of retail sales leakage from Victor,
- determine if the development is an attractor for other types of businesses or development, and
- determine if the development, attraction or retention meets the intent of the City's goals and plans.

The City will make best efforts to insure personal financial information remains confidential. The City will allow staff to sign confidentiality agreements in order to perform financial due diligence.

**TYPES OF INCENTIVES TO BE OFFERED BY THE CITY**

To the extent permitted by law and by the City's financial position, the City may assist a commercial property owner or developer by offering and/or providing the following in part or in whole:

1. Public Infrastructure improvements to include the waiver of water and sewer plant investment fees and/or physical connection fees, as allowed by law or contractual agreements.
2. Assistance with public processes including permitting, zoning, codes, site plan approval and site inspections.
3. Sales Tax Rebate to the applicant if sales taxes increase from the base year (amounts and or percentage to be determined by a vote of Council). (This rebate will require an Ordinance by Council)
4. Property Tax (personal or real) Rebates (amounts and or percentage to be determined by a vote of Council). (This rebate will require an Ordinance by Council)

5. Site acquisitions.
6. Site preparation.
7. Utility pay-back agreements to encourage the expansion of water and sanitary sewer coverage areas.
8. Re-payment contracts for infrastructure from future developers with 10 year sunsets.
9. Historic tax credits from Federal or State agencies.
10. Economic development grants that might become available.

Incentives should not exceed a calculated ROI of 5 years or the estimated amount of new City sales or property taxes generated that can be reasonably defined and determined to result from the new or expanded business within 5 years. The City gives a higher priority to those incentives that do not cause a negative financial impact on the City at the onset of the project.

#### **AGREEMENT STIPULATIONS**

An Economic Development Incentive Agreement shall be developed for each approved applicant and shall include provisions for the reimbursement of applicable local incentives if the applicant *fails* to achieve established investment, job creation, retention or other commitments. The reimbursement provision shall be included in the contract agreement and shall include, at a minimum:

- Terms and method of repaying any rebated property taxes to the City.
- Repayment of the cost of the extension of utilities.
- Repayment of any waiver of permit or inspection fees and utility plant investment and/or physical connection fees.
- Repayment of all out-of-pocket costs to the City, including labor and equipment, materials and property costs.
- A provision allowing the City Administrator, with the approval of the City Council, to modify provisions contained within the contract for the repayment of the cost of the extension of utilities, or the waiver of fees should the City determine such provisions need modification due to conditions in the general economy, industry specific conditions, or in the event of natural disasters.

An annual report submitted by the applicant to the City Administrator describing the annual and cumulative investment made by the company at the site, full-time and part-time employment and average wages paid for all new employees shall be used to determine the success or failure of the incentives.

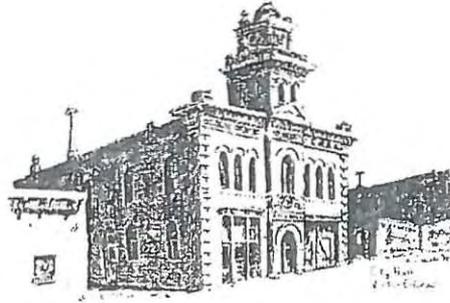
The City also has the option of holding fees, costs and charges in abeyance until the applicant can prove the value of their improvements.

#### **PROCEDURE:**

The applicant shall submit the Economic Development Incentive Application to the City Administrator or City Clerk. An analysis and recommendation from staff will be submitted to City Council in a timely fashion. Council will make all final decisions on incentives. City staff will annually review each incentive agreement for compliance.

**CITY OF VICTOR  
ECONOMIC DEVELOPMENT  
INCENTIVE APPLICATION**

--CONFIDENTIAL--



Company/Project Name: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
Building Address: \_\_\_\_\_  
City, State and Zip: \_\_\_\_\_  
Phone Number: \_\_\_\_\_ Website: \_\_\_\_\_  
Fax: \_\_\_\_\_ Email: \_\_\_\_\_  
Primary Contact Name: \_\_\_\_\_ Title: \_\_\_\_\_  
Phone Number: \_\_\_\_\_ Email: \_\_\_\_\_

1. Who is the legal owner of the building/property? \_\_\_\_\_
2. Is there a lease in place? Who is the lessee? \_\_\_\_\_
3. Is the project a relocation of an existing facility or a new facility to expand operations? If relocation, please provide addresses of all existing locations: \_\_\_\_\_  
\_\_\_\_\_
4. If an existing business, will project result in abandonment of an existing building? \_\_\_\_\_
5. Property Description:
  - a. Legal description \_\_\_\_\_
  - b. Attach a map of the project, including site plans.
6. Current value of building based on an appraisal or Teller County Assessor's valuation. \_\_\_\_\_
7. Increased Value/Estimated Total Cost of Project:  
Structures: \$ \_\_\_\_\_ Site Development: \$ \_\_\_\_\_  
Personal Property: \$ \_\_\_\_\_ Other Improvement: \$ \_\_\_\_\_
8. Indicate incentives and terms the applicant is requesting: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

9. Give a brief description of the activities to be performed at this location, including a description of products to be produced and/or services to be provided. \_\_\_\_\_

10. Project Construction Phase:

Estimate percentage of project development and construction dollars to be spent with Victor-based contractors, subs or vendors.

Construction costs: \$ \_\_\_\_\_ Percentage of local contractors: \_\_\_\_\_ %

Estimate number of construction employees: \_\_\_\_\_

Construction Start Date: \_\_\_\_\_ Completion Date: \_\_\_\_\_

11. Describe any off-site infrastructure requirements:

Water: \_\_\_\_\_

Wastewater: \_\_\_\_\_

Streets/Sidewalks: \_\_\_\_\_

Drainage: \_\_\_\_\_

Other: \_\_\_\_\_

12. Type of jobs created. List the job titles and average wages.

13. Type of benefits to be provided to employees.

14. Employment Information:

Employment Info	Existing Operations (if applicable)	At Project Start	At Term of Incentives
<b>Total Number of NEW Permanent, Full-time jobs (FTEs)</b>			
<b>Total Number of RETAINED Permanent, FTEs</b>			

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**Total Annual Payroll for  
all FTE's**

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15. Estimated annual utility usage for project:

Electric: \$ \_\_\_\_\_ Gas: \$ \_\_\_\_\_

Water: \$ \_\_\_\_\_ Wastewater: \$ \_\_\_\_\_

16. Estimated gross annual sales expected: \$ \_\_\_\_\_

17. Describe any other direct benefit this project will have on Victor:

18. Is property zoned correctly for the type of usage? \_\_\_\_\_

19. Discuss any environmental impacts created or eliminated by the project.

20. If the building is historically significant, what are the applicants efforts for preservation of the building?

21. Justification of incentive request: Substantiate and more fully describe the justification for this request. Include the amount of the rebate and incentives requested and show how it will contribute to the financial viability of the project. Attach additional information if needed.

22. List additional incentive and rebate factors to be considered for this project.

23. Attach copies of a business plan, financial information and projections.

*This incentive application is submitted with the acknowledgment that additional certified financial information may be required. This information is true and accurate to the best of my knowledge.*

\_\_\_\_\_  
Owner

\_\_\_\_\_  
Owner

\_\_\_\_\_  
Owner

\_\_\_\_\_  
Owner

\_\_\_\_\_  
Date

***For City Use Only***

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ROI Calculations (max 5 year payback to City):

Incentives Approved:

Terms:

\_\_\_\_\_  
Mayor, City of Victor

\_\_\_\_\_  
Date

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## COUNCIL COMMUNICATION

**CITY COUNCIL WORK-SESSION:** March 25, 2014  
**PREPARED BY:** Tara Marshall and Linda Vigil  
**DEPT. HEAD SIGNATURE:** *Tara Marshall*  
**# OF ATTACHMENTS:** 1

**SUBJECT:** Consideration of an Ordinance providing for the control of cross-connections in order to prevent backflow and protect the City's water supply system from contamination

**PRESENTER:** Tom Acre, City Manager

**RECOMMENDED CITY COUNCIL ACTION:** Discussion and consideration of an ordinance regarding the recommended backflow prevention methods and scheduling the approval of the ordinance by City Council at a future regular meeting.

**SUMMARY STATEMENT:**

The purpose of the Backflow Prevention/Cross Connection Program is to reduce the risk of contamination or pollution of the city's public water system, comply with Article 12 of the Colorado Drinking Water Regulations and protect the city's water supply. The ordinance shall allow staff to implement the program to identify possible cross connections, ensure that cross connection control devices are installed where needed, and to set forth the schedule of periodic testing of the installed control devices. It should be noted that the city is not in compliance and may be subject to future penalties.

**EXPENDITURE REQUIRED:** The costs associated with the installation, maintenance and the inspection of the backflow preventers will be the customer's responsibility; however, city facilities will be required to comply with the ordinance and staff will have to survey the needs of city facilities to determine the cost.

**SOURCE OF FUNDS:** City Department Budgets - based upon designated location of backflow device within city owned facilities.

**POLICY ISSUE:**

A Backflow Prevention/Cross Connection Program is mandated and necessary to comply with Article 12 of the Colorado Drinking Water Regulations. The approval of the ordinance will allow staff to implement and enforce the program and protect the City's water supply by preventing cross connection and backflow problems.

**ALTERNATIVE:** City Council could request modifications to the proposed ordinance.

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**BACKGROUND INFORMATION:**

The purpose of the Backflow Prevention/Cross Connection Program is to reduce the risk of contamination or pollution of the public water system, comply with Article 12 of the Colorado Drinking Water Regulations and protect the city's water supply. The implementation of the program will allow staff to identify possible cross connections, ensure that cross connection control devices are installed where needed, and ensure the installed devices are tested regularly. The cross connection/backflow prevention ordinance was provided to City Council on January 10, 2012 for discussion during a work session by then Superintendent Jim Fernandez. The cost to the customers was discussed by City Council members at length and at the time City Manager Gil de Rubio was also working on an energy audit in hopes of offsetting some of the cost to the customers created by the imposition of requirements of the ordinance. The implementation of the program was postponed at that time and due to employee turnover the ordinance was further delayed. It is now necessary to bring this issue to the forefront to comply with the state mandate.

ORDINANCE NO.

AN ORDINANCE PROVIDING FOR THE CONTROL OF CROSS-CONNECTIONS  
IN ORDER TO PREVENT BACKFLOW AND PROTECT THE CITY'S WATER  
SUPPLY SYSTEM FROM CONTAMINATION.

**WHEREAS**, the City of Trinidad's Water Department is a water activity enterprise of the City of Trinidad that operates and maintains a public water system for the use and benefit of the inhabitants of the City and other water users within its service area; and

**WHEREAS**, the federal Safe Drinking Water Act, codified as 42 USC § 300f, et seq., and the regulations promulgated with respect thereto, create a duty for federal, state and local authorities to do those things necessary to protect public water systems, such as the City's, from the entry of contaminants that could be harmful to the health of persons connected to and otherwise using such system; and

**WHEREAS**, federal law authorizes civil and criminal actions against persons, including governmental entities that operate water supply systems, that fail to comply with lawful orders issued pursuant to the Safe Drinking Water Act and associated regulations; and

**WHEREAS**, the State of Colorado has adopted a statute generally making it unlawful for any person, including local governments and the officials thereof, to willfully violate, disobey or disregard any public health law of the state (see § 24-1-114, C.R.S.); and

**WHEREAS**, in response to the federal mandate in the Safe Drinking Water Act, this Colorado statute specifically makes it unlawful for any person to make, install or maintain any cross-connection between a water system providing drinking water to the public and any pipe, plumbing fixture or water system which contains water of a quality below the minimum general standards for drinking water supplied to the public [§ 24-1-114(1)(h), C.R.S.]; and

**WHEREAS**, in addition to possible criminal penalties, Colorado law permits the institution of civil actions and the imposition of civil penalties against those who violate state public health standards and regulations (§ 24-1-114.1, C.R.S.); and

**WHEREAS**, the Colorado Primary Drinking Water Regulations, contained in Article 12 thereof, mandates that a public water system shall have no uncontrolled cross connections to pipes, fixtures or supplies that contain water not meeting minimum state standards for drinking water and also require all public water system operators to protect their water supply systems from contamination; and

**WHEREAS**, said regulations also enumerate four ways in which a supplier of water "shall protect the public water system," including:

- a. Identification of hazardous service connections;

- b. Requiring system users to install and maintain containment devices on health hazard service connections;
- c. Requiring that containment devices be approved by the water supplier prior to installation; and
- d. Requiring that all containment devices be tested and maintained as necessary on installation and at least annually thereafter, by a trained cross-connection control technician (Article 12, Section 2, 5CCR 1003-1); and

**WHEREAS**, in order to comply with the foregoing federal and state mandates, and more importantly to do what is necessary and prudent to protect the City's water supply system and the health and welfare of those connected to its system, the City Council of the City of Trinidad has determined that a cross-connection control ordinance, as hereinafter set forth, should be adopted and enforced.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TRINIDAD**, as follows:

Section 12-86 is hereby added to the City of Trinidad's Municipal Code to read as follows:

CHAPTER 12, ARTICLE 5  
BACKFLOW PREVENTION AND CROSS-CONNECTIONS

Sections:	
12-86(1)	Definitions
12-86(2)	Requirements
12-86(3)	Compliance procedures
12-86(4)	Appeals
12-86(5)	Jurisdictional issues and conflicts
12-86(6)	Violation and Penalties

12-86

(1) Definitions

Unless the context specifically indicates otherwise, the meanings of terms used in this Chapter shall be as follows:

- a. "Approved backflow prevention assembly" means a backflow prevention assembly described in Foundation for Cross-Connection Control and Hydraulic Research's (FCCC&HR) most current "list of approved backflow prevention assemblies" or American Society of Sanitary Engineers (ASSE).

b. "Backflow" means the undesirable reversal of the direction of flow of water or mixtures of water and other liquids, gases, or other substances into the distribution pipes of the potable water supply from any source(s) caused by backpressure and/or backsiphonage.

c. "Backflow preventer" means a device designed to prevent backflow created by backpressure or backsiphonage.

d. "Backpressure" means backflow caused by a pump, elevated tank, boiler or means that could create an elevated pressure within the nonpotable system greater than the supply pressure.

e. "Backsiphonage" means the flow of water or other liquids, mixtures or substances into the distribution pipes of a potable water supply system from any source other than its intended source caused by negative or sub-atmospheric pressure in the potable water supply system.

f. "Certified cross-connection control technician" means a person who is certified in accordance with the provisions of Article 12 of the Colorado Primary Drinking Water Regulations.

g. "Colorado Cross-Connection Control Manual" means the most recent edition of a manual that has been published by the state addressing cross-connection control practices which will be used as a guidance document for the utility in implementing a cross-connection control program as outlined in Section 12-86(2)

h. "Containment" means the installation of an approved backflow prevention device, or method, on the water service line(s), so that water delivered to the service line cannot return to the City potable water distribution system due to any backpressure and/or backsiphonage condition which might arise.

i. "Contamination" means an impairment of the quality of the potable water by sewage, industrial fluids or waste liquids, compounds or other materials to a degree which creates an actual hazard to the public health through poisoning or through the spread of disease.

j. "Cross-connection" means any physical arrangement whereby a public water supply is connected, directly or indirectly, with any other water supply system, sewer, drain, conduit, pool, storage reservoir, plumbing fixture or other device which contains, or may contain, contaminated water, sewage or other waste or liquid of unknown or unsafe quality which may be capable of imparting contamination to the public water supply as a result of backflow. Bypass arrangements, jumper connections, removable

sections, swivel or changeover devices, four-way valve connections, and other temporary or permanent devices through which, or because of which, backflow could occur are considered to be cross-connections.

k. City Manager means the City Manager of the City of Trinidad or, if this person is not available, his or her subordinate designated by the City Manager in writing.

l. "Hazard, degree of means an evaluation of the potential risk to public health and the adverse effect of the hazard upon the potable water system.

m. "Isolation" means a backflow device installed on a branch of the internal plumbing to protect the customer's water system.

n. "Nonpotable water" means water that is not safe for human consumption or that is of questionable quality.

o. "Plumbing Codes" means the most recent edition of the plumbing codes that has been published by International Code Council and adopted by city ordinance.

p. "Pollution" means the presence of any foreign substance (organic, inorganic, radiological or biological) in the water that may degrade the water quality so as to constitute a hazard or impair its usefulness.

q. "Potable water" means water free from impurities in amounts sufficient to cause disease or harmful physiological effects. The bacteriological, chemical and radiological quality shall conform with State of Colorado Department of Public Health and Environment Primary Drinking Water Regulations.

r. "Utility" means the City of Trinidad's Water Department, a water activity enterprise of the City of Trinidad.

s. "Water service connection" means the customer's water service connection from the point of tap on the public potable water system; to the point where the service line enters the customer's structure (residential or business) including the customer's stop box or shut-off valve or meter, whichever comes first, from the utility water main. There shall be no unprotected takeoffs from the service line ahead of any meter or backflow prevention device located at the point of delivery to the customer's water system. Service connection shall also include any other temporary or emergency water service connections from a fire hydrant or any connection to the public potable water system.

(2) Requirements

a. Implementation and Enforcement of a Cross-Connection Control Program

(I) The City Manager and/or his or her designee is vested with the authority and responsibility for implementing and enforcing an effective cross-connection control program in accordance with the provisions of this Chapter.

b. Backflow Preventers Required At All Service Connections.

(I) The City Manager and/or his or her designee will identify those customers who are likely to have cross connection and an approved backflow preventer shall be required to be installed at each and every service connection to a water service customer's premises for the safety and protection of the City water supply system and water users connected to that system.

(II) Property owner's and/or Agent's of the property shall be required to obtain a Backflow Service Permit (BSP) prior to the installation of the backflow prevention device. The installation of the backflow preventer must be performed by a licensed a plumber or certified cross connection technician. The city reserves the right to impose a fee for the issuance of the Backflow Service Permit.

c. The City Manager and/or his or her designee shall have the authority to specify the type of backflow preventer to be installed at each service connection. The decision with respect to the type of backflow preventer that will be required in any specific situation shall be based upon:

(I) The degree of hazard posed by the facility connected or to be connected to the City water supply system.

(II) The degree of hazard shall be determined on a case-by-case basis, depending upon the circumstances of each particular case.

(III) In making determinations as to the degree of hazard and the type of device required, owners shall rely upon the latest published edition of the Colorado Cross-Connection Control Manual for guidance and may rely upon other generally accepted authorities, including but not limited to the official publications of the American Society of Sanitary Engineering

publications of the American Society of Sanitary Engineering and Section 608 of the International Plumbing Codes.

(IV) The City Manager and/or his or her designee may give notice in writing to the customer to install such an approved backflow prevention device at each service connection to the customer's premises.

d. Inspections and Testing Procedures.

(I) The City Manager and/or his or her designee has the authority to inspect any system owned and maintained by a utility customer to determine the extent and degree of hazard

e. The City Manager and/or his or her designee shall notify the utility customer/owner at any premises where containment backflow preventers are installed to have certified inspections and operational tests made upon installation of the containment device and at least once per year thereafter.

(I) The City Manager and/or his or her designee may require certified tests at more frequent intervals if the potential hazard is deemed to be great enough. These inspections and tests shall be performed by a certified cross-connection control technician

f. The City Manager and/or his or her designee reserves the right to inspect or require the inspection of installed backflow preventers at any time to ensure the devices are in proper working order. The devices shall be repaired, overhauled or replaced whenever they are found to be defective. These inspections, tests and repairs shall be at the owners' expense. Records of such tests, repairs and overhaul, including materials and parts changed, shall be filed with the City Manager's office within ten days of such activities. The Utility shall keep and maintain such records in accordance with the requirements of applicable law.

(I) Containment devices will be tested annually according to the Colorado Revised Statutes and Colorado Department of Public Health and Environment Primary Drinking Water Regulations.

(II) If such devices are allowed by the City Manager and/or his or her designee as an acceptable alternative to total containment, isolation devices used to isolate and lower the overall degree of hazard for a property will be tested on a

schedule determined by the City Manager and/or his or her designee.

(III) Isolation devices used on lawn irrigation sprinkler devices will be tested upon installation, repair or relocation, but in any event no less often than once annually.

g. Policy

(I) No water service connection to any premises shall be installed or maintained unless the water supply is protected as required by Colorado Revised Statutes, the regulations of the Colorado Department of Public Health and Environment and by this Chapter.

(II) Water service to any premises shall be denied or discontinued, as the case may be, by the Utility if:

(A) A backflow preventer required by this Chapter is not installed within the time period specified; or

(B) An approved backflow preventer has been removed or bypassed; or

(C) An unprotected cross-connection exists on the premises; or

(D) An approved backflow preventer is not maintained.

(III) Whenever service is denied or discontinued, it shall not be provided or restored until the condition or defect identified in subparagraph 12-86(2)(g)(II) has been corrected.

(IV) The customer's system shall be open for inspection at all reasonable times to authorized representatives of the City Manager and/or his or her designee to determine whether cross-connections or other structural or sanitary hazards, including violations exist.

(V) When, as a result of an inspection, a condition involving a violation results in a health or sanitary hazard is determined to exist, or a utility customer and/or owner fails to properly test, repair, or otherwise maintain a backflow preventer as required, the City Manager and/or his or her designee shall have the option of immediate

discontinuance of water service to the premises until the condition has been corrected, or may specify a date for compliance after which time the City Manager and/or his or her designee may discontinue service until the customer has corrected the condition.

h. Installations of Backflow Prevention Devices

(I) At the customer's expense, backflow preventers shall be installed immediately downstream of the water service customer's water meter, whether the meter is a pit set or an interior set. In all cases, backflow preventers must be installed before the first branch line leading off the service line.

(II) With the City Manager and/or his or her designee approval, a backflow preventer may be installed to isolate a hazard and lower the degree of hazard for containment. Such approval shall not be given unless the City Manager and/or his or her designee is convinced that the use of the isolation device will pose no threat to the public water supply system.

(III) All backflow preventers shall be located and installed according to the manufacturer's specifications and in accordance with the Colorado Cross-Connection Control Manual. The City Manager and/or his or her designee shall review and approve all plans as to the type, location and installation of backflow prevention devices.

(IV) Utility customers and/or owner shall be responsible for the design, installation and maintenance of properly sized and located drains and drain systems whenever the type of backflow preventer specified or approved by the City Manager and/or his or her designee requires a drain.

(V) Plans shall not be modified relative to the type, location or installation of any backflow preventer approved by the City Manager and/or his or her designee without the City Manager and/or his or her designee prior knowledge and written authorization.

(VI) If the location or removal of the backflow preventer results in the meter becoming contaminated, the customer shall bear the cost of decontamination.

i. Device Testing Equipment

(I) The acceptability of any testing gauge or apparatus shall be determined by the City Manager and/or his or designee.

(II) Any testing gauge, apparatus or scientific instrument utilized for the testing of backflow prevention devices shall be checked for accuracy at least yearly and be in calibration as certified by the cross connection technicians who perform the testing. The City Manager and/or his or her designee may require written certificates or other proof of calibration for such items to be filed with the utility.

(III) At a minimum, all test gauges must meet ASSE-1064 Standards for Gauges

(IV) All Certified Cross-Connection Technicians who perform work in the City shall obtain a contractor's license and file copies of their licenses.

j. Listings Identifying Approved Backflow Prevention Devices.

(I) Any approved backflow prevention assembly required shall be of a type and size approved by the City Manager and/or his or her designee and listed in the FCCC & HR's List of Approved Backflow Prevention Assemblies, American Society of Sanitary Engineers (ASSE) Series 5000 and/or Colorado Plumbing Codes.

(3) Compliance Procedures

a. Installation of Required Devices

(I) Upon completion of inspection of the premises, or, in the case of new construction, on review of the construction plans, the City Manager and/or his or her designee shall notify the owner in writing of the type of device that will be required at each service connection within the owner's facility.

(II) The owner shall, at its expense, purchase and install the device and any necessary plumbing or construction. Such plumbing and construction shall meet all provisions of the Colorado Cross-Connection Control Manual, Plumbing Codes and/or City of Trinidad design standards and

construction specifications and must be inspected and approved by the City Manager and/or his or her designee. The device, including any device installed prior to the effective date of this ordinance, shall be the property of the owner.

b. Compliance Required

(I) The utility will take necessary action to ensure compliance with the Colorado Department of Health, Primary Drinking Water Regulations, 5 CCR 1003-1, and more specifically Article 12 thereof, and the Colorado Revised Statutes, Section 25-1-114, as amended.

(II) The owner of the premises is required to permit entry to the premises for inspection, testing and maintenance purposes at reasonable times. Failure to permit entry to the premises will result in the premises being regarded as a high hazard, and a reduced-pressure-principle device will be required to protect the City of Trinidad's water supply system.

(III) The owner is required to provide all necessary plumbing and construction needed for the installation of the device. Failure to provide such required plumbing and construction will result in action being taken as provided for in Section 12-86(6)

(IV) A member of the board of appeals or employee of the City of Trinidad charged with the enforcement of this code, while acting for the jurisdiction in good faith and without malice in the discharge of the duties required by this code or other pertinent law or ordinance, shall not thereby be rendered liable personally and is hereby relieved from personal liability for any damage accruing to persons or property as a result of any act or by reason of an act or mission in the discharge of official duties. Any suit instituted against an officer or employee because of an act performed by that officer or employee in the lawful discharge of duties and under the provision of this code shall be defended by legal representative of the jurisdiction until the final termination of the proceedings. The City Manager or any subordinate shall not be liable for the cost in any action, suit or proceeding that is instituted in pursuance of the provisions of this code.

(4) Appeals

a. Any decision of the City Manager and/or his or her designee concerning the type of backflow preventer required with respect to any water service connection, may be appealed to the City of Trinidad Board of Building Code Appeals, provided the owner files a notice of appeal to the Office of the City Clerk within 15 days following the date upon issuance of the city's written notice.

b. The notice of appeal shall identify the property owner by name, mailing address, telephone number and email address, if any, and include the address of the owner's facility. In addition, the notice shall:

(I) Identify the City Manager and/or his or her designee's decision, which is being appealed; and

(II) Identify the type of backflow preventer that the owner believes should be installed at the owner's facility; and

(III) Include the owner's reasons for preferring such backflow preventer, instead of the backflow preventer designated by the City Manager and/or his or her designee, with or without written documentation supporting the owner's position.

c. After owner's and/or agent's filing of the notice of appeal, the City Clerk, by written notice specifying the date, time and place of the hearing, shall schedule a hearing. Such hearing shall be conducted within 20 days following the date upon which the notice of appeal was filed, unless the owner and the City Manager both agree to a later hearing date. At the hearing, the owner may present testimony, evidence and arguments in support of the owner's position and the City Manager and/or his or her designee may present testimony, evidence and arguments in support of the City Manager and/or his or her designee's decision.

d. The City Manager's and/or his or her designee's decision shall be affirmed unless the Board of Building Code of Appeals finds that the City Manager's and/or his or her designee's decision was arbitrary or capricious or that such decision violates applicable federal, state or local law. The Board of Building Code of Appeal's decision shall be rendered at the said hearing and the decision shall be final.

e. The paramount issue with respect to any appeal will be whether the type of backflow preventer authorized will adequately protect the public water supply system

f. Before deciding any appeal, the Board of Building Code of Appeals shall consider:

(I) Whether the backflow preventer specified by the City Manager and/or his or her designee is necessary to adequately protect the City's water supply system;

(II) Whether the backflow preventer preferred by the owner would adequately protect the City's water supply system;

(III) Whether the use of the backflow preventer preferred by the owner, when compared to the backflow preventer designated by the City Manager and/or his or her designee, is likely to result in a material decrease in the level of protection to the public water supply system.

g. In cases where an existing structure is being remodeled or reconstructed or where a change in the use of an existing structure will or may create a greater degree of hazard to the public water supply system than previously existed, the City Manager may consider:

(I) Differences in the type of devices and backflow prevention assemblies, when comparing the type of backflow preventer specified by the City Manager and/or his or her designee to the type of backflow preventer preferred by the owner;

(II) Differences in the of installation and maintenance of the two types of backflow preventers being compared;

(III) Other significant differences or practical difficulties associated with the use, installation and/or maintenance of the backflow preventers being compared;

(IV) Other relevant life, safety or health concerns raised by the City Manager and/or his or her designee or the owner.

(5) Jurisdictional issues and conflicts:

In the event the provisions of 12-86 are in conflict with the requirements of any plumbing code or regulation applicable in the City of Trinidad, the provisions of 12-86 shall apply to the extent necessary to resolve the conflict and shall be binding upon all plumbing officials performing official duties within the City.

(6) Violations and Penalties

a. The City Manager and/or his or her designee shall notify the owner, or authorized agent of the owner, of the building or premises of a violation of this Chapter. The City Manager and/or his or her designee shall set a specific time for the owner to have the violation removed or corrected. If the owner fails to correct the violation in the specified time, the City Manager and/or his or her designee may, if in his or her judgment decide the connection poses an imminent health hazard, suspend water service to the building or premises. Additional fines or penalties may also be invoked following suspension of service.

b. Violations of this Chapter may be prosecuted in municipal court and, upon conviction thereof, a violator may be fined at a minimum of \$300 and not to exceed \$2,650 per violation, per day.

INTRODUCED BY COUNCILMEMBER \_\_\_\_\_, READ  
AND ORDERED PUBLISHED, this \_\_\_\_ day of \_\_\_\_\_, 2014.

FINALLY PASSED AND APPROVED this \_\_\_\_ day of \_\_\_\_\_,  
2014.

EFFECTIVE DATE OF THIS ORDINANCE SHALL BE the \_\_\_\_ day of  
\_\_\_\_\_, 2014.

\_\_\_\_\_  
JOSEPH A. REORDA, Mayor

ATTEST:

\_\_\_\_\_  
AUDRA GARRETT, City Clerk

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## COUNCIL COMMUNICATION

**CITY COUNCIL WORK SESSION:** March 25, 2014  
**PREPARED:** March 19, 2014  
**DEPT. HEAD SIGNATURE:** *Tom Acre*  
**# OF ATTACHMENTS:** 1

**SUBJECT:** Consideration of an Ordinance Adjusting Trinidad Landfill Fees.

**PRESENTER:** Tom Acre, City Manager

**RECOMMENDED CITY COUNCIL ACTION:** Provide input to staff regarding, recommended Landfill Fees increase and scheduling the Ordinance for a regular meeting of the City Council.

**SUMMARY STATEMENT:**

It has been over 10 years since the rates at the Trinidad Landfill were adjusted. Since this time, several important updates have been done at the site; in addition, the cost of operating the Landfill has increased. The City is also required by State mandate to maintain funds for the closure and post closure monitoring of the Landfill.

The Ordinance adjusting Landfill was previously presented and discussed by City Council in late January 2014. Staff received additional input regarding the proposed rate change regarding fees for roll-off containers. Instead of weight charge for roll off containers a flat fee will be assessed based on the size of the container. The same fee will be charged regardless of if the roll-off container is full or partially full. An additional 10% charge will be added to the fee if the container is filled above the top of the container.

Interest has been expressed from an individual to lease and operate the scale for a set fee payable to the City. Staff is anticipating receiving a written proposal and will evaluate the feasibility of the proposal and need to solicit additional proposals. This will potentially enhance revenue from landfill operations as well.

**EXPENDITURE REQUIRED:** N/A

**SOURCE OF FUNDS:** N/A

**POLICY ISSUE:** Increasing the City of Trinidad Landfill Fees as recommended.

**ALTERNATIVE:** City Council could elect to approve a greater fee increase, modify the recommendations presented or could elect to not increase fees.

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**BACKGROUND INFORMATION:**

The City of Trinidad owns and operates the Trinidad Landfill located at 2401 North State Street. The Landfill is open to the public Monday – Friday from 7:00 to 3:00 and Saturday from 8:00 to 12:00. The City currently employs 3 full time personnel at the Landfill.

It has been in excess of 10 years since the rates at the Landfill were adjusted. Since this time, several important updates have been done at the site. The City purchased a scale, which will allow vehicles to be weighed and waste to be calculated by weight rather than cubic yard. Also, the City purchased additional land that will be used to provide necessary cover (dirt) for the deposited waste in the future.

Staff researched comparable landfills in the region and used these findings to recommend the following fee increases. The current Landfill rates and recommended increases are as follows:

	<b>Current Rate</b>	<b>Recommended Increase</b>	<b>New Rate</b>
<b>Resident of City:</b>			
Typical Waste	\$4.00/cubic yard(cyd)	\$2.00/cyd	\$6.00/cyd
Construction Waste	\$4.00/cyd	\$3.00/cyd	\$7.00/cyd
Yard Waste	\$4.00/cyd	\$3.00/cyd	\$7.00/cyd
35 Gallon Bag Sticker	\$0.65/bag	\$0.35/bag	\$1.00/bag
<b>Resident of County:</b>			
Typical Waste	\$4.00/cyd	\$2.50/cyd	\$6.50/cyd
Construction Waste	\$4.00/cyd	\$4.00/cyd	\$8.00/cyd
Yard Waste	\$4.00/cyd	\$4.00/cyd	\$8.00/cyd
35 Gallon Bag Sticker	\$0.65/bag	\$0.60/bag	\$1.25/bag
<b>Commercial:</b>			
Typical Waste	\$4.00/cyd	\$2.00/cyd	\$20.00/ton = \$6.00cyd
Construction Waste	\$4.00/cyd	\$3.00/cyd	\$23.33/ton = \$7.00cyd
<b>Special Waste:</b>	\$6.00/cyd	\$4.00/cyd	\$10.00/cyd
<b>Tires:</b>	\$1.00 - \$2.50 - \$15.00	\$1.00 - \$1.50 - \$3.00	\$2.00 - \$4.00 - \$18.00

Based on the three year average (2010, 2011, and 2012) the Trinidad Landfill processed 42,953 cubic yards of refuse. Using this average, staff conservatively estimates an increase in Landfill revenue of \$86,000 per year based on new rates. It can be anticipated with the other fee changes we should see additional increase in revenue.



ORDINANCE NO.

AN ORDINANCE ADJUSTING THE CITY OF TRINIDAD  
LANDFILL FEES

WHEREAS, the City of Trinidad owns and operates a municipal solid waste disposal facility; and

WHEREAS, it has been in excess of ten years since the City adjusted landfill fees; and

WHEREAS, a rate increase is necessary in order to provide sufficient revenues to cover operation and maintenance of the municipal landfill.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TRINIDAD, COLORADO, that:

1. Section 11-12, City Landfill Fees of Chapter 11, Municipal Solid Waste, of the Code of Ordinances of the City of Trinidad is repealed and re-enacted in its entirety as follows:

Section 11-12. City Landfill Fees.

(1) Fees assessed for the disposal of garbage, trash, and tire carcasses, and all other types of acceptable refuse at the Trinidad Landfill shall be at the following rates for each delivery:

(a) City residents

- (I) Typical municipal waste, \$5.75 per cubic yard
- (II) Construction waste, \$6.75 per cubic yard
- (III) Yard waste, \$6.75 per cubic yard
- (IV) One dollar (\$1.00) per container of waste material not to exceed thirty-five (35) gallons in volume

(b) County residents

- (I) Typical municipal waste, \$6.25 per cubic yard
- (II) Construction waste, \$7.75 per cubic yard
- (III) Yard waste, \$7.75 per cubic yard
- (IV) One dollar and twenty-five cents (\$1.25) per container of waste material not to exceed thirty-five (35) gallons in volume

(c) Commercial haulers, roll offs and any other non-residential large scale vehicle

- (I) Typical municipal waste, \$20.00 per ton (equivalent to \$5.75 per cubic yard plus \$0.25 surcharge referenced in Section 11-12(1)(e))
- (II) Construction waste, \$23.33 per ton (equivalent to \$6.75 per cubic yard plus \$0.25 surcharge referenced in Section 11-12(1)(e))
- (III) Roll off containers will be charged a flat fee as follows:
  - 10 cubic yards - \$60.00
  - 15 cubic yards - \$90.00
  - 20 cubic yards - \$120.00
  - 30 cubic yards - \$180.00
  - 40 cubic yards - \$260.00

(A 10% charge will be added to the fee for containers that are overfilled)

(d) Special waste shall not be subject to the rate set forth in subsection (a) or (b), but instead shall be subject to the following rates.

	Disposal fee
(I) Special wastes such as contaminated soil, sand trap waste, non-friable asbestos, and other similar wastes which require additional handling by landfill personnel	\$9.75 per cubic yard minimum fee, special negotiation may be required.
(II) Passenger car tires and light truck tires up to and including a 16 ½" wheel size	\$2.00 per tire
(II) Medium duty and heavy duty truck tires ranging in size larger than a 16 ½" wheel up to and including a 22 ½" wheel	\$4.00 per tire
(III) All tires sizes larger than a 22 ½" wheel up to and including heavy equipment tires	\$18.00 per tire

(e) A surcharge of \$0.25 per cubic yard for anticipated future landfill closure expenses shall be added to the foregoing fees, set forth in subsections (a)(b)(c) and (d)(I) with the revenues from such surcharge to be placed in a restricted fund, to be used for landfill closure purposes only.

(2) Such fees shall be in effect and added to the monthly utility bill commencing with the adoption of this ordinance and shall be due and payable with said utility bill. Any individual who is not a customer of one or more of the City's utility services shall be billed the following month for the prior month's charges and payments are due and payable upon receipt of statement.

(3) All garbage, rubbish, or other waste material under the control of the City at the City landfill, shall be the property of the City, and it shall be unlawful for any person to enter upon such sites, or carry off, dispose of, burn or in any manner disturb or molest any matter or item deposited or existing upon such sites, except under the direction or authority of the Public Works Director or his/her designee.

(4) All vehicles hauling municipal waste for disposal at the landfill shall be enclosed or tarped. Any person who does not comply with this requirement shall be assessed a double charge for disposal of his/her load.

INTRODUCED BY COUNCILMEMBER \_\_\_\_\_, READ AND ORDERED PUBLISHED, this \_\_\_\_ day of \_\_\_\_\_, 2014.

FINALLY PASSED AND APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2014.

EFFECTIVE DATE OF THIS ORDINANCE SHALL BE the \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
JOSEPH A. REORDA, Mayor

ATTEST:

\_\_\_\_\_  
AUDRA GARRETT, City Clerk

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## COUNCIL COMMUNICATION

CITY COUNCIL WORK SESSION: March 25, 2014  
 PREPARED: March 21, 2014  
 DEPT. HEAD SIGNATURE: *Tom Acre*  
 # OF ATTACHMENTS: 4

**SUBJECT:** Consideration of Comcast Franchise Agreement

**PRESENTER:** Tom Acre, City Manager

**RECOMMENDED CITY COUNCIL ACTION:** Discussion of the Comcast Franchise Agreement renewal and scheduling this item for action at the next regular meeting of the City Council.

**SUMMARY STATEMENT:** Ordinance No. 1880 passed in March 2009 amended the franchise agreement with Comcast for a period of 5 years. Comcast, working with several cities in Colorado developed a model franchise agreement that cities use as the basis for franchise agreement renewals. The franchise agreement sets out mutually agreed upon terms for which Comcast operates in Trinidad to provide services in exchange for the franchise fee. The City collected \$ 74,237 in fees from Comcast in 2013.

The Colorado Communication and Utility Alliance Customer Service Standards are attached and can be included by reference in the franchise agreement or adopted separately.

**EXPENDITURE REQUIRED:** N/A

**SOURCE OF FUNDS:** N/A

**POLICY ISSUE:** Renewal of Franchise Agreement

**ALTERNATIVE:** City Council could elect to request modifications to the Comcast Franchise Agreement

**BACKGROUND INFORMATION:** Per Chapter XI of the Trinidad Home Rule Charter, City Council has municipal power over the issuance of all utilities and franchisees. Attached to this Council Communication is the current Comcast Franchise Agreement, the proposed renewal agreement, the current Ordinance No. 1880, and the Colorado Communication and Utility Alliance Customer Service Standards.

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**COMCAST OF COLORADO/PENNSYLVANIA/WEST VIRGINIA, LLC AND  
CITY OF TRINIDAD, COLORADO**

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**CABLE FRANCHISE AGREEMENT**

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**COMCAST OF COLORADO/PENNSYLVANIA/WEST VIRGINIA, LLC AND  
CITY OF TRINIDAD, COLORADO**

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**CABLE FRANCHISE AGREEMENT**

**SECTION 1. DEFINITIONS**

For the purposes of this Franchise, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning. The word "shall" is always mandatory and not merely directory.

1.1 "Access" means the availability for noncommercial use by various agencies, institutions, organizations, groups and individuals in the community, including the City and its designees, of the Cable System to acquire, create, receive, and distribute video Cable Services and other services and signals as permitted under Applicable Law including, but not limited to:

(A) "Public Access" means Access where community-based, noncommercial organizations, groups or individual members of the general public, on a nondiscriminatory basis, are the primary users.

(B) "Educational Access" means Access where schools are the primary users having editorial control over programming and services. For purposes of this definition, "school" means any State-accredited educational institution, public or private, including, for example, primary and secondary schools, colleges and universities.

(C) "Government Access" means Access where governmental institutions or their designees are the primary users having editorial control over programming and services.

1.2 "Access Channel" means any Channel, or portion thereof, designated for Access purposes or otherwise made available to facilitate or transmit Access programming or services.

1.3 "Activated" means the status of any capacity or part of the Cable System in which any Cable Service requiring the use of that capacity or part is available without further installation of system equipment, whether hardware or software.

1.4 "Affiliate," when used in connection with Grantee, means any Person who owns or controls, is owned or controlled by, or is under common ownership or control with, Grantee.

1.5 "Applicable Law" means any statute, ordinance, judicial decision, executive order or regulation having the force and effect of law, that determines the legal standing of a case or issue.

1.6 “Bad Debt” means amounts lawfully billed to a Subscriber and owed by the Subscriber for Cable Service and accrued as revenues on the books of Grantee, but not collected after reasonable efforts have been made by Grantee to collect the charges.

1.7 “Basic Service” is the level of programming service which includes, at a minimum, all Broadcast Channels, all PEG SD Access Channels required in this Franchise, and any additional Programming added by the Grantee, and is made available to all Cable Services Subscribers in the Franchise Area.

1.8 “Broadcast Channel” means local commercial television stations, qualified low power stations and qualified local noncommercial educational television stations, as referenced under 47 USC § 534 and 535.

1.9 “Broadcast Signal” means a television or radio signal transmitted over the air to a wide geographic audience, and received by a Cable System by antenna, microwave, satellite dishes or any other means.

1.10 “Cable Act” means the Title VI of the Communications Act of 1934, as amended.

1.11 “Cable Operator” means any Person or groups of Persons, including Grantee, who provide(s) Cable Service over a Cable System and directly or through one or more affiliates owns a significant interest in such Cable System or who otherwise control(s) or is (are) responsible for, through any arrangement, the management and operation of such a Cable System.

1.12 “Cable Service” means 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.

1.13 “Cable System” means any facility, including Grantee’s, consisting of a set of closed transmissions 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 a community, 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 Right-of-Way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the federal Communications Act (47 U.S.C. 201 et seq.), except that such facility shall be considered a Cable System (other than for purposes of Section 621(c) (47 U.S.C. 541(c)) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with federal statutes; or (E) any facilities of any electric utility used solely for operating its electric utility systems.

1.14 “Channel” means a portion of the electromagnetic frequency spectrum which is used in the Cable System and which is capable of delivering a television channel (as television channel is defined by the FCC by regulation).

1.15 “City” is the City of Trinidad, Colorado, a body politic and corporate under the laws of the State of Colorado.

1.16 “City Council” means the Trinidad City Council, or its successor, the governing body of the City of Trinidad, Colorado.

1.17 “Commercial Subscribers” means any Subscribers other than Residential Subscribers.

1.18 “Designated Access Provider” means the entity or entities designated now or in the future by the City to manage or co-manage Access Channels and facilities. The City may be a Designated Access Provider.

1.19 “Digital Starter Service” means the Tier of optional video programming services, which is the level of Cable Service received by most Subscribers above Basic Service, and does not include Premium Services.

1.20 “Downstream” means carrying a transmission from the Headend to remote points on the Cable System or to Interconnection points on the Cable System.

1.21 “Dwelling Unit” means any building, or portion thereof, that has independent living facilities, including provisions for cooking, sanitation and sleeping, and that is designed for residential occupancy. Buildings with more than one set of facilities for cooking shall be considered Multiple Dwelling Units unless the additional facilities are clearly accessory.

1.22 “Effective Date” means the date on which all persons necessary to sign this Agreement in order for it to be binding on both parties have executed this Agreement as indicated on the signature page(s), unless a specific date is otherwise provided in the “Term” section herein.

1.23 “FCC” means the Federal Communications Commission.

1.24 “Fiber Optic” means a transmission medium of optical fiber cable, along with all associated electronics and equipment, capable of carrying Cable Service by means of electric lightwave impulses.

1.25 “Franchise” means the document in which this definition appears, *i.e.*, the contractual agreement, executed between the City and Grantee, containing the specific provisions of the authorization granted, including references, specifications, requirements and other related matters.

1.26 “Franchise Area” means the area within the jurisdictional boundaries of the City, including any areas annexed by the City during the term of this Franchise.

1.27 “Franchise Fee” means that fee payable to the City described in subsection 3.1.

1.28 “Grantee” means Comcast of Colorado/Pennsylvania/West Virginia, LLC or its lawful successor, transferee or assignee.

1.29 “Gross Revenues” means, and shall be construed broadly to include all revenues derived directly or indirectly by Grantee and/or an Affiliated Entity that is the cable operator of the Cable System, from the operation of Grantee’s Cable System to provide Cable Services within the Village. Gross revenues include, by way of illustration and not limitation:

- monthly fees for Cable Services, regardless of whether such Cable Services are provided to residential or commercial customers, including revenues derived from the provision of all Cable Services (including but not limited to pay or premium Cable Services, digital Cable Services, pay-per-view, pay-per-event and video-on-demand Cable Services);
- installation, reconnection, downgrade, upgrade or similar charges associated with changes in subscriber Cable Service levels;
- fees paid to Grantee for channels designated for commercial/Leased Access use and shall be allocated on a pro rata basis using total Cable Service subscribers within the Village;
- converter, remote control, and other Cable Service equipment rentals, leases, or sales;
- Advertising Revenues as defined herein;
- late fees, convenience fees and administrative fees which shall be allocated on a pro rata basis using Cable Services revenue as a percentage of total subscriber revenues within the Village;
- revenues from program guides;
- FCC Regulatory Fees; and,
- commissions from home shopping channels and other Cable Service revenue sharing arrangements which shall be allocated on a pro rata basis using total Cable Service subscribers within the Village.

(A) “Advertising Revenues” shall mean revenues derived from sales of advertising that are made available to Grantee’s Cable System subscribers within the Village and shall be allocated on a pro rata basis using total Cable Service subscribers reached by the advertising. Additionally, Grantee agrees that Gross Revenues subject to franchise fees shall include all commissions, rep fees, Affiliated Entity fees, or rebates paid to National Cable Communications (“NCC”) and Comcast Spotlight (“Spotlight”) or their successors associated with sales of advertising on the Cable System within the Village allocated according to this paragraph using

total Cable Service subscribers reached by the advertising.

(B) "Gross Revenues" shall not include:

- actual bad debt write-offs, except any portion which is subsequently collected which shall be allocated on a *pro rata* basis using Cable Services revenue as a percentage of total subscriber revenues within the Village;
- any taxes and/or fees on services furnished by Grantee imposed by any municipality, state or other governmental unit, provided that Franchise Fees and the FCC regulatory fee shall not be regarded as such a tax or fee;
- Franchise Fees;
- fees imposed by any municipality, state or other governmental unit on Grantee including but not limited to Public, Educational and Governmental (PEG) Fees;
- launch fees and marketing co-op fees; and,
- unaffiliated third party advertising sales agency fees which are reflected as a deduction from revenues.

(C) To the extent revenues are received by Grantee for the provision of a discounted bundle of services which includes Cable Services and non-Cable Services, Grantee shall calculate revenues to be included in Gross Revenues using a methodology that allocates revenue on a *pro rata* basis when comparing the bundled service price and its components to the sum of the published rate card, except as required by specific federal, state or local law, it is expressly understood that equipment may be subject to inclusion in the bundled price at full rate card value. This calculation shall be applied to every bundled service package containing Cable Service from which Grantee derives revenues in the Village. The Village reserves its right to review and to challenge Grantee's calculations.

(D) Grantee reserves the right to change the allocation methodologies set forth in this Section 1.29 in order to meet the standards required by governing accounting principles as promulgated and defined by the Financial Accounting Standards Board ("FASB"), Emerging Issues Task Force ("EITF") and/or the U.S. Securities and Exchange Commission ("SEC"). Grantee will explain and document the required changes to the Village as part of any audit or review of franchise fee payments, and any such changes shall be subject to 1.29(E) below.

(E) Resolution of any disputes over the classification of revenue should first be attempted by agreement of the Parties, but should no resolution be reached, the Parties agree that reference shall be made to generally accepted accounting principles ("GAAP") as promulgated and defined by the Financial Accounting Standards Board ("FASB"), Emerging Issues Task Force ("EITF") and/or the U.S. Securities and Exchange Commission ("SEC"). Notwithstanding the forgoing, the Village reserves its right to challenge Grantee's calculation of Gross Revenues,

including the interpretation of GAAP as promulgated and defined by the FASB, EITF and/or the SEC.

1.30 "Headend" means any facility for signal reception and dissemination on a Cable System, including cables, antennas, wires, satellite dishes, monitors, switchers, modulators, processors for Broadcast Signals, equipment for the Interconnection of the Cable System with adjacent Cable Systems and Interconnection of any networks which are part of the Cable System, and all other related equipment and facilities.

1.31 "Leased Access Channel" means any Channel or portion of a Channel commercially available for video programming by Persons other than Grantee, for a fee or charge.

1.32 "Manager" means the City Manager of the City or designee.

1.33 "Person" means any individual, sole proprietorship, partnership, association, or corporation, or any other form of entity or organization.

1.34 "Premium Service" means programming choices (such as movie Channels, pay-per-view programs, or video on demand) offered to Subscribers on a per-Channel, per-program or per-event basis.

1.35 "Residential Subscriber" means any Person who receives Cable Service delivered to Dwelling Units or Multiple Dwelling Units, excluding such Multiple Dwelling Units billed on a bulk-billing basis.

1.36 "Right-of-Way" means each of the following which have been dedicated to the public or are hereafter dedicated to the public and maintained under public authority or by others and located within the City: streets, roadways, highways, avenues, lanes, alleys, bridges, sidewalks, easements, right-of-way and similar public property and areas.

1.37 "State" means the State of Colorado.

1.38 "Subscriber" means any Person who or which elects to subscribe to, for any purpose, Cable Service provided by Grantee by means of or in connection with the Cable System and whose premises are physically wired and lawfully Activated to receive Cable Service from Grantee's Cable System, and who is in compliance with Grantee's regular and nondiscriminatory terms and conditions for receipt of service.

1.39 "Subscriber Network" means that portion of the Cable System used primarily by Grantee in the transmission of Cable Services to Residential Subscribers.

1.40 "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received (as provided in 47 U.S.C. Section 153(43)).

1.41 “Telecommunications Service” means the offering of Telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used (as provided in 47 U.S.C. Section 153(46)).

1.42 “Tier” means a group of Channels for which a single periodic subscription fee is charged.

1.43 “Two-Way” means that the Cable System is capable of providing both Upstream and Downstream transmissions.

1.44 “Upstream” means carrying a transmission to the Headend from remote points on the Cable System or from Interconnection points on the Cable System.

## SECTION 2. GRANT OF FRANCHISE

### 2.1 Grant

(A) The City hereby grants to Grantee a nonexclusive authorization to make reasonable and lawful use of the Right-of-Way within the City to construct, operate, maintain, reconstruct and rebuild a Cable System for the purpose of providing Cable Service subject to the terms and conditions set forth in this Franchise and in any prior utility or use agreements entered into by Grantee with regard to any individual property.

(B) Nothing in this Franchise shall be deemed to waive the lawful requirements of any generally applicable City ordinance existing as of the Effective Date, as defined in subsection 1.22.

(C) Each and every term, provision or condition herein is subject to the provisions of State law, federal law, the Charter of the City, and the ordinances and regulations enacted pursuant thereto. The Charter and Municipal Code of the City, as the same may be amended from time to time, are hereby expressly incorporated into this Franchise as if fully set out herein by this reference. Notwithstanding the foregoing, the City may not unilaterally alter the material rights and obligations of Grantee under this Franchise. All ordinances or parts of ordinances or Municipal Code that are in conflict with or otherwise impose obligations different from the provisions of this Franchise are superseded by this Franchise. Notwithstanding any other provision of this Franchise, Grantee reserves the right to challenge provisions of any ordinance, rule, regulation, or other enactment of the City that conflicts with its contractual rights under this Franchise, either now or in the future.

(D) This Franchise shall not be interpreted to prevent the City from imposing additional lawful conditions, including additional compensation conditions for use of the Right-of-Way, should Grantee provide service other than Cable Service.

(E) Grantee promises and guarantees, as a condition of exercising the privileges granted by this Franchise, that any Affiliate of the Grantee directly involved in the offering of Cable Service in the Franchise Area, or directly involved in the management or operation of the

Cable System in the Franchise Area, will also comply with the obligations of this Franchise.

(F) No rights shall pass to Grantee by implication. Without limiting the foregoing, by way of example and not limitation, this Franchise shall not include or be a substitute for:

(1) Any other permit or authorization required for the privilege of transacting and carrying on a business within the City that may be required by the ordinances and laws of the City;

(2) Any permit, agreement, or authorization required by the City for Right-of-Way users in connection with operations on or in Right-of-Way or public property including, by way of example and not limitation, street cut permits; or

(3) Any permits or agreements for occupying any other property of the City or private entities to which access is not specifically granted by this Franchise including, without limitation, permits and agreements for placing devices on poles, in conduits or in or on other structures.

(G) This Franchise is intended to convey limited rights and interests only as to those Right-of-Way in which the City has an actual interest. It is not a warranty of title or interest in any Right-of-Way; it does not provide the Grantee with any interest in any particular location within the Right-of-Way; and it does not confer rights other than as expressly provided in the grant hereof.

(H) This Franchise does not authorize Grantee to provide Telecommunications Service, or to construct, operate or maintain Telecommunications facilities. This Franchise is not a bar to the provision of non-Cable Services, or to the imposition of any lawful conditions on Grantee with respect to Telecommunications, whether similar, different or the same as the conditions specified herein. This Franchise does not relieve Grantee of any obligation it may have to obtain from the City an authorization to provide Telecommunications Services, or to construct, operate or maintain Telecommunications facilities, or relieve Grantee of its obligation to comply with any such authorizations that may be lawfully required.

## **2.2 Use of Right-of-Way**

(A) Subject to the City's supervision and control, Grantee may erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the Right-of-Way within the City such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of a Cable System within the City. Grantee, through this Franchise, is granted extensive and valuable rights to operate its Cable System for profit using the City's Right-of-Way in compliance with all applicable City construction codes and procedures. As trustee for the public, the City is entitled to fair compensation as provided for in Section 3 of this Franchise to be paid for these valuable rights throughout the term of the Franchise.

(B) Grantee must follow City established nondiscriminatory requirements for placement of Cable System facilities in Right-of-Way, including the specific location of facilities in the Right-of-Way, and must in any event install Cable System facilities in a manner that minimizes interference with the use of the Right-of-Way by others, including others that may be installing communications facilities. Within limits reasonably related to the City's role in protecting public health, safety and welfare, the City may require that Cable System facilities be installed at a particular time, at a specific place or in a particular manner as a condition of access to a particular Right-of-Way; may deny access if Grantee is not willing to comply with City's requirements; and may remove, or require removal of, any facility that is not installed by Grantee in compliance with the requirements established by the City, or which is installed without prior City approval of the time, place or manner of installation, and charge Grantee for all the costs associated with removal; and may require Grantee to cooperate with others to minimize adverse impacts on the Right-of-Way through joint trenching and other arrangements.

### **2.3 Term of Franchise**

The term of the Franchise granted hereunder shall be ten (10) years, commencing upon the Effective Date of the Franchise, unless the Franchise is renewed or is lawfully terminated in accordance with the terms of this Franchise Agreement and the Cable Act, or is extended by mutual agreement of the City and Grantee.

### **2.4 Franchise Nonexclusive**

This Franchise shall be nonexclusive, and subject to all prior rights, interests, easements or licenses granted by the City to any Person to use any property, Right-of-Way, right, interest or license for any purpose whatsoever, including the right of the City to use same for any purpose it deems fit, including the same or similar purposes allowed Grantee hereunder. The City may at any time grant authorization to use the Right-of-Way for any purpose not incompatible with Grantee's authority under this Franchise and for such additional franchises for Cable Systems as the City deems appropriate.

### **2.5 Police Powers**

Grantee's rights hereunder are subject to the police powers of the City to adopt and enforce ordinances necessary to the safety, health, and welfare of the public, and Grantee agrees to comply with all laws and ordinances of general applicability enacted, or hereafter enacted, by the City or any other legally constituted governmental unit having lawful jurisdiction over the subject matter hereof. The City shall have the right to adopt, from time to time, such ordinances as may be deemed necessary in the exercise of its police power; provided that such hereinafter enacted ordinances shall be reasonable and not materially modify the terms of this Franchise. Any conflict between the provisions of this Franchise and any other present or future lawful exercise of the City's police powers shall be resolved in favor of the latter.

## 2.6 Competitive Equity

(A) Purposes. The Grantee and the City acknowledge that there is increasing competition in the video marketplace among cable operators, direct broadcast satellite providers, telephone companies, broadband content providers and others; new technologies are emerging that enable the provision of new and advanced services to City residents; and changes in the scope and application of the traditional regulatory framework governing the provision of video services are being considered in a variety of federal, state and local venues. To foster an environment where video service providers using the public Right-of-Way can compete on a competitively neutral and nondiscriminatory basis; encourage the provision of new and advanced services to City residents; promote local communications infrastructure investments and economic opportunities in the City; and provide flexibility in the event of subsequent changes in the law, the Grantee and the City have agreed to the provisions in this Section, and they should be interpreted and applied with such purposes in mind.

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

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

(D) Subsequent Change in Law. If there is a change in federal, state or local law that provides for a new or alternative form of authorization for a VSP to provide video services to subscribers in the City, or that otherwise changes the nature or extent of the obligations that the City may request from or impose on a VSP providing video services to subscribers in the City, the City agrees that, notwithstanding any other provision of law, upon Grantee's written request the City shall: (i) permit the Grantee to provide video services to subscribers in the City on the same terms and conditions as are applicable to a VSP under the changed law; (ii) modify this Agreement to comply with the changed law; or (iii) modify this Agreement to ensure competitive equity between the Grantee and other VSPs, taking into account the conditions under which other VSPs are permitted to provide video services to subscribers in the City. The City and the Grantee shall implement the provisions of this Section within sixty (60) days after the Grantee submits a written request to the City. Notwithstanding any provision of law that imposes a time

or other limitation on the Grantee's ability to take advantage of the changed law's provisions, the Grantee may exercise its rights under this Section at any time, but not sooner than thirty (30) days after the changed law goes into effect.

(E) Effect on This Agreement. Any agreement, authorization, right or determination to provide video services to subscribers in the City under Sections 2.6B, 2.6C or 2.6D shall supersede this Agreement, and the Grantee, at its option, may terminate this Agreement or portions thereof, upon written notice to the City, without penalty or damages.

(F) The term "Video Service Provider" or "VSP" shall mean any entity using the public Right-of-Way to provide multiple video programming services to subscribers, for purchase or at no cost, regardless of the transmission method, facilities, or technology used. A VSP shall include but is not limited to any entity that provides cable services, multichannel multipoint distribution services, broadcast satellite services, satellite-delivered services, wireless services, and Internet-Protocol based services.

## **2.7 Familiarity with Franchise**

The Grantee acknowledges and warrants by acceptance of the rights, privileges and agreements granted herein, that it has carefully read and fully comprehends the terms and conditions of this Franchise and is willing to and does accept all lawful and reasonable risks of the meaning of the provisions, terms and conditions herein. The Grantee further acknowledges and states that it has fully studied and considered the requirements and provisions of this Franchise, and finds that the same are commercially practicable at this time, and consistent with all local, State and federal laws and regulations currently in effect, including the Cable Act.

## **2.8 Effect of Acceptance**

By accepting the Franchise, the Grantee: (1) acknowledges and accepts the City's legal right to issue and enforce the Franchise; (2) accepts and agrees to comply with each and every provision of this Franchise subject to Applicable Law; and (3) agrees that the Franchise was granted pursuant to processes and procedures consistent with Applicable Law, and that it will not raise any claim to the contrary.

# **SECTION 3. FRANCHISE FEE PAYMENT AND FINANCIAL CONTROLS**

## **3.1 Franchise Fee**

As compensation for the benefits and privileges granted under this Franchise and in consideration of permission to use the City's Right-of-Way, Grantee shall within sixty (60) days of the Effective Date of this agreement pay as a Franchise Fee to the City, throughout the duration of and consistent with this Franchise, an amount equal to five percent (5%) of Grantee's Gross Revenues.

### **3.2 Payments**

Grantee's Franchise Fee payments to the City shall be computed quarterly for the preceding calendar quarter ending March 31, June 30, September 30, and December 31. Each quarterly payment shall be due and payable no later than sixty (60) days after said dates.

### **3.3 Acceptance of Payment and Recomputation**

No acceptance of any payment shall be construed as an accord by the City that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the City may have for further or additional sums payable or for the performance of any other obligation of Grantee.

### **3.4 Quarterly Franchise Fee Reports**

Each payment shall be accompanied by a written report to the City, or concurrently sent under separate cover, verified by an authorized representative of Grantee, containing an accurate statement in summarized form, as well as in detail, of Grantee's Gross Revenues and the computation of the payment amount. Such reports shall detail all Gross Revenues of the Cable System.

### **3.5 Annual Franchise Fee Reports**

Upon thirty (30) day's written notice from the City, Grantee shall, within sixty (60) days after the end of each year, furnish to the City a statement stating the total amount of Gross Revenues for the year and all payments, deductions and computations for the period.

### **3.6 Franchise Fees Subject to Audit**

Upon reasonable prior written notice and no more than once annually, during normal business hours at Grantee's principal business office, the City shall have the right to inspect the Grantee's financial records used to calculate the City's franchise fees; provided, however, that any such inspection shall take place within two (2) years from the date the Franchising Authority receives such payment, after which period any such payment shall be considered final.

### **3.7 Late Payments**

In the event any payment due quarterly is not received within forty-five (45) days from the end of the calendar quarter, Grantee shall pay interest on the amount due (at the prime rate as listed in the Wall Street Journal on the date the payment was due), compounded daily, calculated from the date the payment was originally due until the date the City receives the payment.

### **3.8 Underpayments**

If a net Franchise Fee underpayment is discovered as the result of an audit, Grantee shall pay interest at the rate of the five percent (5%) per annum, compounded quarterly, calculated from the date each portion of the underpayment was originally due until the date Grantee remits the underpayment to the City.

### **3.9 Alternative Compensation**

In the event the obligation of Grantee to compensate the City through Franchise Fee payments is lawfully suspended or eliminated, in whole or part, then Grantee shall pay to the City compensation equivalent to the compensation paid to the City by other similarly situated users of the City's Right-of-Way for Grantee's use of the City's Right-of-Way, provided that in no event shall such payments exceed the equivalent of five percent (5%) of Grantee's Gross Revenues (subject to the other provisions contained in this Franchise), to the extent consistent with Applicable Law.

### **3.10 Maximum Legal Compensation**

The parties acknowledge that, at present, applicable federal law limits the City to collection of a maximum permissible Franchise Fee of five percent (5%) of Gross Revenues. In the event that at any time during the duration of this Franchise, the City is authorized to collect an amount in excess of five percent (5%) of Gross Revenues, then this Franchise may be amended unilaterally by the City to provide that such excess amount shall be added to the Franchise Fee payments to be paid by Grantee to the City hereunder, provided that Grantee has received at least ninety (90) days prior written notice from the City of such amendment, so long as all cable operators in the City are paying the same Franchise Fee amount.

### **3.11 Additional Commitments Not Franchise Fee Payments**

No term or condition in this Franchise shall in any way modify or affect Grantee's obligation to pay Franchise Fees. Although the total sum of Franchise Fee payments and additional commitments set forth elsewhere in this Franchise may total more than five percent (5%) of Grantee's Gross Revenues in any twelve (12) month period, Grantee agrees that the additional commitments herein are not Franchise Fees as defined under any federal law, nor are they to be offset or credited against any Franchise Fee payments due to the City, nor do they represent an increase in Franchise Fees.

### **3.12 Tax Liability**

The Franchise Fees shall be in addition to any and all taxes or other levies or assessments which are now or hereafter required to be paid by businesses in general by any law of the City, the State or the United States including, without limitation, sales, use and other taxes, business license fees or other payments. Payment of the Franchise Fees under this Franchise shall not exempt Grantee from the payment of any other license fee, permit fee, tax or charge on the

business, occupation, property or income of Grantee that may be lawfully imposed by the City. Any other license fees, taxes or charges shall be of general applicability in nature and shall not be levied against Grantee solely because of its status as a Cable Operator, or against Subscribers, solely because of their status as such.

### **3.13 Financial Records**

Grantee agrees to meet with a representative of the City upon request to review Grantee's methodology of record-keeping, financial reporting, the computing of Franchise Fee obligations and other procedures, the understanding of which the City deems necessary for reviewing reports and records.

### **3.14 Payment on Termination**

If this Franchise terminates for any reason, the Grantee shall file with the City within ninety (90) calendar days of the date of the termination, a financial statement, certified by an independent certified public accountant, showing the Gross Revenues received by the Grantee since the end of the previous fiscal year. The City reserves the right to satisfy any remaining financial obligations of the Grantee to the City by utilizing the funds available in any security provided by the Grantee.

## **SECTION 4. ADMINISTRATION AND REGULATION**

### **4.1 Authority**

(A) The City shall be vested with the power and right to reasonably regulate the exercise of the privileges permitted by this Franchise in the public interest.

(B) Nothing in this Franchise shall limit nor expand the City's right of eminent domain under State law.

### **4.2 Rates and Charges**

All of Grantee's rates and charges related to or regarding Cable Services shall be subject to regulation by the City to the full extent authorized by applicable federal, State and local laws.

### **4.3 Rate Discrimination**

All of Grantee's rates and charges shall be published (in the form of a publicly-available rate card) and be non-discriminatory as to all Persons and organizations of similar classes, under similar circumstances and conditions. Grantee shall apply its rates in accordance with Applicable Law, with identical rates and charges for all Subscribers receiving identical Cable Services, without regard to race, color, ethnic or national origin, religion, age, sex, sexual orientation, marital, military or economic status, or physical or mental disability or geographic location within the City. Grantee shall offer the same Cable Services to all Residential

Subscribers at identical rates to the extent required by Applicable Law and to Multiple Dwelling Unit Subscribers to the extent authorized by FCC rules or applicable Federal law. Grantee shall permit Subscribers to make any lawful in-residence connections the Subscriber chooses without additional charge nor penalizing the Subscriber therefor. However, if any in-home connection requires service from Grantee due to signal quality, signal leakage or other factors, caused by improper installation of such in-home wiring or faulty materials of such in-home wiring, the Subscriber may be charged reasonable service charges by Grantee. Nothing herein shall be construed to prohibit:

(A) The temporary reduction or waiving of rates or charges in conjunction with valid promotional campaigns; or,

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

(C) The offering of rate discounts for Cable Service; or,

(D) The Grantee from establishing different and nondiscriminatory rates and charges and classes of service for Commercial Subscribers, as allowable by federal law and regulations.

#### **4.4 Filing of Rates and Charges**

Grantee shall, upon thirty (30) day's written notice from the City, provide a complete schedule of applicable rates and charges for Cable Services provided under this Franchise. Nothing in this subsection shall be construed to require Grantee to file rates and charges under temporary reductions or waivers of rates and charges in conjunction with promotional campaigns.

#### **4.5 Cross Subsidization**

Grantee shall comply with all Applicable Laws regarding rates for Cable Services and all Applicable Laws covering issues of cross subsidization.

#### **4.6 Reserved Authority**

Both Grantee and the City reserve all rights they may have under the Cable Act and any other relevant provisions of federal, State, or local law.

#### **4.7 Franchise Amendment Procedure**

Either party may at any time seek an amendment of this Franchise by so notifying the other party in writing. Within thirty (30) days of receipt of notice, the City and Grantee shall meet to discuss the proposed amendment(s). If the parties reach a mutual agreement upon the suggested amendment(s), such amendment(s) shall be submitted to the City Council for its approval. If so approved by the City Council and the Grantee, then such amendment(s) shall be

deemed part of this Franchise. If mutual agreement is not reached, there shall be no amendment.

#### **4.8 Performance Evaluations**

(A) The City may hold performance evaluation sessions upon ninety (90) days written notice, provided that such evaluation sessions shall be held no more frequently than once every two (2) years. All such evaluation sessions shall be conducted by the City.

(B) Special evaluation sessions may be held at any time by the City during the term of this Franchise, upon ninety (90) days written notice to Grantee.

(C) All regular evaluation sessions shall be open to the public and announced at least two (2) weeks in advance in any manner within the discretion of the City. Grantee shall also include with or on the Subscriber billing statements for the billing period immediately preceding the commencement of the session, written notification of the date, time, and place of the regular performance evaluation session, and any special evaluation session as required by the City, provided Grantee receives appropriate advance notice.

(D) Topics which may be discussed at any evaluation session may include, but are not limited to, Cable Service rate structures; Franchise Fee payments; liquidated damages; free or discounted Cable Services; application of new technologies; Cable System performance; Cable Services provided; programming offered; Subscriber complaints; privacy; amendments to this Franchise; judicial and FCC rulings; line extension policies; and the City or Grantee's rules; provided that nothing in this subsection shall be construed as requiring the renegotiation of this Franchise.

(E) During evaluations under this subsection, Grantee shall fully cooperate with the City and shall provide such information and documents maintained in the ordinary course of business as the City may reasonably require to perform the evaluation.

#### **4.9 Force Majeure**

In the event Grantee is prevented or delayed in the performance of any of its obligations under this Franchise by reason beyond the control of Grantee, Grantee shall have a reasonable time, under the circumstances, to perform the affected obligation under this Franchise or to procure a substitute for such obligation which is satisfactory to the City. Those conditions which are not within the control of Grantee include, but are not limited to, natural disasters, civil disturbances, work stoppages or labor disputes, power outages, telephone network outages, and severe or unusual weather conditions which have a direct and substantial impact on the Grantee's ability to provide Cable Services in the City and which was not caused and could not have been avoided by the Grantee which used its best efforts in its operations to avoid such results.

If Grantee believes that a reason beyond its control has prevented or delayed its compliance with the terms of this Franchise, Grantee shall provide documentation as reasonably required by the City to substantiate the Grantee's claim. If Grantee has not yet cured the

deficiency, Grantee shall also provide the City with its proposed plan for remediation, including the timing for such cure.

## SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS

### 5.1 Indemnification

The Grantee shall indemnify, defend and hold harmless the City, its officers, employees, and agents from and against any liability or claims resulting from property damage or bodily injury (including accidental death) that arise out of the Grantee's construction, operation, maintenance or removal of the Cable System, including, but not limited to, reasonable attorneys' fees and costs, provided that the City shall give the Grantee written notice of its obligation to indemnify and defend the City within ten (10) business days of receipt of a claim or action pursuant to this Section. If the City determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the City.

### 5.2 Insurance

Throughout the term of this Franchise Agreement, the Grantee shall, at its own cost and expense, maintain Comprehensive General Liability Insurance and provide the City certificates of insurance designating the City and its officers, boards, commissions, councils, elected officials, agents and employees as additional insureds and demonstrating that the Grantee has obtained the insurance required in this Section. Such policy or policies shall be in the minimum amount of One Million Dollars (\$1,000,000.00) for bodily injury or death to any one person, and One Million Dollars (\$1,000,000.00) for bodily injury or death of any two or more persons resulting from one occurrence, and One Million Dollars (\$1,000,000.00) for property damage resulting from any one accident. Such policy or policies shall be non-cancelable except upon thirty (30) days prior written notice to the City. The Grantee shall provide workers' compensation coverage in accordance with applicable law. The Grantee shall indemnify and hold harmless the City from any workers compensation claims to which the Grantee may become subject during the term of this Franchise.

## SECTION 6. CUSTOMER SERVICE

### 6.1 Customer Service Standards

The City hereby adopts the customer service standards set forth in Part 76, §76.309 of the FCC's rules and regulations, as amended. The Grantee shall comply in all respects with the customer service requirements established by the FCC.

### 6.2 Subscriber Privacy

The Grantee shall comply with all applicable federal and state privacy laws, including Section 631 of the Cable Act and regulations adopted pursuant thereto.

### **6.3 Subscriber Bills**

Subscriber bills shall be designed in such a way as to present the information contained therein clearly and comprehensibly to Subscribers, and in a way that (A) is not misleading and (B) does not omit material information. Notwithstanding anything to the contrary in Section 6.1, above, the Grantee may, in its sole discretion, consolidate costs on Subscriber bills as may otherwise be permitted by Section 622(c) of the Cable Act (47 U.S.C. §542(c)).

## **SECTION 7. BOOKS AND RECORDS**

### **7.1 Books and Records**

Throughout the term of this Franchise Agreement, the Grantee agrees that the City may review the Grantee's books and records that are maintained in the ordinary course of business in the Franchise Area to monitor Grantee's compliance with the provisions of this Franchise Agreement, upon reasonable prior written notice to the Grantee, at the Grantee's business office, during normal business hours, and without unreasonably interfering with Grantee's business operations. All such documents that may be the subject of an inspection by the City shall be retained by the Grantee for a minimum period of three (3) years.

### **7.2 Confidentiality**

The City agrees to treat as confidential any books or records that constitute proprietary or confidential information under federal or State law, to the extent Grantee makes the City aware of such confidentiality. Grantee shall be responsible for clearly and conspicuously stamping the word "Confidential" on each page that contains confidential or proprietary information, and shall provide a brief written explanation as to why such information is confidential under State or federal law. If the City believes it must release any such confidential books and records in the course of enforcing this Franchise, or for any other reason, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. If the City receives a demand from any Person for disclosure of any information designated by Grantee as confidential, the City shall, so far as consistent with Applicable Law, advise Grantee and provide Grantee with a copy of any written request by the party demanding access to such information within a reasonable time. Until otherwise ordered by a court or agency of competent jurisdiction, the City agrees that, to the extent permitted by State and federal law, it shall deny access to any of Grantee's books and records marked confidential as set forth above to any Person. Grantee shall reimburse the City for all reasonable costs and attorney's fees incurred in any legal proceedings pursued under this Section.

### **7.3 Records Required**

(A) Grantee shall at all times maintain, and shall furnish to the City upon 30 days written request and subject to Applicable Law:

- (1) A complete set of maps showing the exact location of all Cable System

equipment and facilities in the Right-of-Way, but excluding detail on proprietary electronics contained therein and Subscriber drops. As-built maps including proprietary electronics shall be available at Grantee's offices for inspection by the City's authorized representative(s) or agent(s) and made available to such during the course of technical inspections as reasonably conducted by the City. These maps shall be certified as accurate by an appropriate representative of the Grantee;

(2) A copy of all FCC filings on behalf of Grantee, its parent corporations or Affiliates which relate to the operation of the Cable System in the City;

(3) A log of Cable Services added or dropped, Channel changes, number of Subscribers added or terminated, all construction activity, and total homes passed for the previous twelve (12) months; and

(4) A list of Cable Services, rates and Channel line-ups.

(B) Subject to subsection 7.2, all information furnished to the City is public information, and shall be treated as such, except for information involving the privacy rights of individual Subscribers.

#### **7.4 Copies of Federal and State Reports**

Within thirty (30) days of a written request, Grantee shall submit to the City copies of all pleadings, applications, notifications, communications and documents of any kind, submitted by Grantee or its parent corporation(s), to any federal, State or local courts, regulatory agencies and other government bodies if such documents directly relate to the operations of Grantee's Cable System within the City. Grantee shall not claim confidential, privileged or proprietary rights to such documents unless under federal, State, or local law such documents have been determined to be confidential by a court of competent jurisdiction, or a federal or State agency.

### **SECTION 8. PROGRAMMING**

#### **8.1 Broad Programming Categories**

Grantee shall provide or enable the provision of at least the following initial broad categories of programming to the extent such categories are reasonably available:

- (A) Educational programming;
- (B) Colorado news, weather & information;
- (C) Sports;
- (D) General entertainment (including movies);

- (E) Children/family-oriented;
- (F) Arts, culture and performing arts;
- (G) Foreign language;
- (H) Science/documentary;
- (I) National news, weather and information; and,
- (J) Public, Educational and Government Access, to the extent required by this Franchise.

## **8.2 Deletion or Reduction of Broad Programming Categories**

- (A) Grantee shall not delete or so limit as to effectively delete any broad category of programming within its control without the prior written consent of the City.
- (B) In the event of a modification proceeding under federal law, the mix and quality of Cable Services provided by Grantee on the Effective Date of this Franchise shall be deemed the mix and quality of Cable Services required under this Franchise throughout its term.

## **8.3 Obscenity**

Grantee shall not transmit, or permit to be transmitted over any Channel subject to its editorial control, any programming which is obscene under, or violates any provision of, Applicable Law relating to obscenity, and is not protected by the Constitution of the United States. Grantee shall be deemed to have transmitted or permitted a transmission of obscene programming only if a court of competent jurisdiction has found that any of Grantee's officers or employees or agents have permitted programming which is obscene under, or violative of, any provision of Applicable Law relating to obscenity, and is otherwise not protected by the Constitution of the United States, to be transmitted over any Channel subject to Grantee's editorial control. Grantee shall comply with all relevant provisions of federal law relating to obscenity.

## **8.4 Parental Control Device**

Upon request by any Subscriber, Grantee shall make available a parental control or lockout device, traps or filters to enable a Subscriber to control access to both the audio and video portions of any or all Channels. Grantee shall inform its Subscribers of the availability of the lockout device at the time of their initial subscription and periodically thereafter. Any device offered shall be at a rate, if any, in compliance with Applicable Law.

## **8.5 Continuity of Service Mandatory**

(A) It shall be the right of all Subscribers to continue to receive Cable Service from Grantee insofar as their financial and other obligations to Grantee are honored and they are in compliance with Grantee's terms of services, residential service agreement or other such provisions. The Grantee shall act so as to ensure that all Subscribers receive continuous, uninterrupted Cable Service regardless of the circumstances. For the purposes of this subsection, "uninterrupted" does not include short-term outages of the Cable System for maintenance or testing.

(B) In the event of a change of grantee, or in the event a new Cable Operator acquires the Cable System in accordance with this Franchise, Grantee shall cooperate with the City, new franchisee or Cable Operator in maintaining continuity of Cable Service to all Subscribers. During any transition period, Grantee shall be entitled to the revenues for any period during which it operates the Cable System, and shall be entitled to reasonable costs for its services when it no longer operates the Cable System.

(C) In the event Grantee fails to operate the Cable System for four (4) consecutive days without prior approval of the Manager, or without just cause, the City may, at its option, operate the Cable System itself or designate another Cable Operator until such time as Grantee restores service under conditions acceptable to the City or a permanent Cable Operator is selected. If the City is required to fulfill this obligation for Grantee, Grantee shall reimburse the City for all reasonable costs or damages that are the result of Grantee's failure to perform.

## **8.6 Services for the Disabled**

Grantee shall comply with the Americans with Disabilities Act and any amendments thereto.

## **SECTION 9. ACCESS**

### **9.1 Access Channels**

(A) Grantee shall continue to provide, at no charge, one (1) Public, Educational or Governmental (PEG) Access Channel.

(B) The City may delegate management of the PEG Access Channels to a Designated Access Provider.

(C) All PEG Access Channels provided for in this Agreement shall be carried system-wide in the Franchise Area, and shall be provided on the Basic Service tier unless otherwise agreed to by the parties.

(D) The technical quality of the PEG Access Channels shall not be lower than the quality of other Channels on the same tier of service, at the same technical quality that programming is provided to Grantee by the City or its Designated Access Provider.

(E) The City shall establish and enforce rules for use of the PEG Access Channels to assure nondiscriminatory access to the Channels to similarly situated users; and to promote use and viewership of the channels, consistent with applicable law. PEG Access Channels may not be used for commercial purposes.

(F) Grantee may not exercise any editorial control over the content of programming on the PEG Access Channels.

## **9.2 Access Channel Location**

Grantee shall use its best efforts to minimize the movement of Access Channel assignments. Grantee shall provide to the City a minimum of ninety (90) days prior written notice, prior to any relocation of its Access Channels, unless the change is required by federal law, in which case Grantee shall give the City the maximum notice possible.

## **9.3 Return Lines**

(A) Grantee shall continue maintain the return lines from all existing Access broadcast facilities to the Headend in order to enable the distribution of programming to Subscribers on the Access Channels. Grantee shall continuously maintain these return lines throughout the term of the Agreement, unless any of these locations are no longer used in the future to originate Access programming.

(B) Within eighteen (18) months of a written request by the City, Grantee shall construct and maintain additional return lines to other locations in the Franchise Area; provided however, that Grantee's construction costs shall be paid by the City or its Designated Access Provider.

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

## SECTION 10. GENERAL RIGHT-OF-WAY USE AND CONSTRUCTION

### 10.1 Permits and General Obligations

The Grantee shall be responsible for obtaining, at its own cost and expense, all generally applicable permits, licenses, or other forms of approval or authorization necessary to construct, operate, maintain or repair the Cable System, or any part thereof, prior to the commencement of any such activity. Construction, installation, and maintenance of the Cable System shall be performed in a safe, thorough and reliable manner using materials of good and durable quality. All transmission and distribution structures, poles, other lines, and equipment installed by the Grantee for use in the Cable System in accordance with the terms and conditions of this Franchise Agreement shall be located so as to minimize the interference with the proper use of the Right-of-Way and the rights and reasonable convenience of property owners who own property that adjoins any such Right-of-Way.

### 10.2 Conditions of Street Occupancy

New Grades or Lines. If the grades or lines of any Public Way within the Franchise Area are lawfully changed at any time during the term of this Franchise Agreement, then the Grantee shall, upon reasonable advance written notice from the City (which shall not be less than ten (10) business days) and at its own cost and expense, protect or promptly alter or relocate the Cable System, or any part thereof, so as to conform with any such new grades or lines. If public funds are available to any other user of the Right-of-Way for the purpose of defraying the cost of any of the foregoing, the City shall notify Grantee of such funding and make available such funds to the Grantee.

### 10.3 Relocation at request of Third Party

The Grantee shall, upon reasonable prior written request of any Person holding a permit issued by the City to move any structure, temporarily move its wires to permit the moving of such structure; provided (i) the Grantee may impose a reasonable charge on any Person for the movement of its wires, and such charge may be required to be paid in advance of the movement of its wires; and (ii) the Grantee is given not less than ten (10) business days advance written notice to arrange for such temporary relocation.

### 10.4 Restoration of Right-of-Way

If in connection with the construction, operation, maintenance, or repair of the Cable System, the Grantee disturbs, alters, or damages any Right-of-Way, the Grantee agrees that it shall at its own cost and expense replace and restore any such Public Way to a condition reasonably comparable to the condition of the Right-of-Way existing immediately prior to the disturbance.

## **10.5 Safety Requirements**

The Grantee shall, at its own cost and expense, undertake all necessary and appropriate efforts to maintain its work sites in a safe manner in order to prevent failures and accidents that may cause damage, injuries or nuisances. All work undertaken on the Cable System shall be performed in substantial accordance with applicable FCC or other federal and state regulations. The Cable System shall not unreasonably endanger or interfere with the safety of Persons or property in the Franchise Area.

## **10.6 Trimming of Trees and Shrubbery**

The Grantee shall have the authority to trim trees or other natural growth overhanging any of its Cable System in the Franchise Area so as to prevent contact with the Grantee's wires, cables, or other equipment. All such trimming shall be done at the Grantee's sole cost and expense. The Grantee shall be responsible for any damage caused by such trimming.

## **10.7 Aerial and Underground Construction**

At the time of Cable System construction, if all of the transmission and distribution facilities of all of the respective public or municipal utilities in any area of the Franchise Area are underground, the Grantee shall place its Cable Systems' transmission and distribution facilities underground, provided that such underground locations are actually capable of accommodating the Grantee's cable and other equipment without technical degradation of the Cable System's signal quality. In any region(s) of the Franchise Area where the transmission or distribution facilities of the respective public or municipal utilities are both aerial and underground, the Grantee shall have the discretion to construct, operate, and maintain all of its transmission and distribution facilities, or any part thereof, aerially or underground. Nothing in this Section shall be construed to require the Grantee to construct, operate, or maintain underground any ground-mounted appurtenances such as Subscriber taps, line extenders, system passive devices, amplifiers, power supplies, pedestals, or other related equipment.

## **10.8 Undergrounding and Beautification Projects**

In the event all users of the Right-of-Way relocate aerial facilities underground as part of an undergrounding or neighborhood beautification project, Grantee shall participate in the planning for relocation of its aerial facilities contemporaneously with other utilities. Grantee's relocation costs shall be included in any computation of necessary project funding by the municipality or private parties. Grantee shall be entitled to reimbursement of its relocation costs from public or private funds raised for the project and made available to other users of the Right-of-Way.

## SECTION 11. CABLE SYSTEM, TECHNICAL STANDARDS AND TESTING

### 11.1 Subscriber Network

(A) The Cable System shall deliver no less than one hundred ten (110) Channels of video programming services to Subscribers.

(B) Equipment must be installed so that all closed captioning programming received by the Cable System shall include the closed caption signal so long as the closed caption signal is provided consistent with FCC standards. Equipment must be installed so that all local signals received in stereo or with secondary audio tracks are retransmitted in those same formats.

(C) All construction shall be subject to the City's permitting process.

(D) Grantee will take prompt corrective action if it finds that any facilities or equipment on the Cable System are not operating as expected, or if it finds that facilities and equipment do not comply with the requirements of this Franchise or Applicable Law.

(E) Grantee's construction decisions shall be based solely upon legitimate engineering decisions and shall not take into consideration the income level of any particular community within the Franchise Area.

(F) Grantee shall not be required to obtain permits for construction work related to the connection and disconnection of Subscribers between the distribution plant in the public rights of way and the Subscriber's residence to the extent such work disturbs no more than 20 feet of the public right of way.

### 11.2 Standby Power

Grantee's Cable System Headend shall be capable of providing at least twelve (12) hours of emergency operation. In addition, throughout the term of this Franchise, Grantee shall have a plan in place, along with all resources necessary for implementing such plan, for dealing with outages of more than four (4) hours. This outage plan and evidence of requisite implementation resources shall be presented to the City no later than thirty (30) days following receipt of a request.

### 11.3 Emergency Alert Capability

Grantee shall provide an operating Emergency Alert System ("EAS") throughout the term of this Franchise in compliance with FCC standards.

### 11.4 Technical Performance

The technical performance of the Cable System shall meet or exceed all applicable federal (including, but not limited to, the FCC), and State technical standards, as they may be

amended from time to time, regardless of the transmission technology utilized. The City shall have the full authority permitted by Applicable Law to enforce compliance with these technical standards.

### 11.5 Cable System Performance Testing

(A) Grantee shall, at Grantee's expense, perform the following tests on its Cable System:

- (1) All tests required by the FCC;
- (2) All other tests reasonably necessary to determine compliance with technical standards adopted by the FCC at any time during the term of this Franchise; and
- (3) All other tests as otherwise specified in this Franchise.

(B) At a minimum, Grantee's tests shall include:

- (1) Cumulative leakage index testing of any new construction;
- (2) Semi-annual compliance and proof of performance tests in conformance with generally accepted industry guidelines;
- (3) Tests in response to Subscriber complaints;
- (4) Periodic monitoring tests, at intervals not to exceed six (6) months, of Subscriber (field) test points, the Headend, and the condition of standby power supplies; and
- (5) Cumulative leakage index tests, at least annually, designed to ensure that one hundred percent (100%) of Grantee's Cable System has been ground or air tested for signal leakage in accordance with FCC standards.

(C) Grantee shall maintain written records of all results of its Cable System tests, performed by or for Grantee. Copies of such test results will be provided to the City upon reasonable request.

(D) If the FCC no longer requires proof of performance tests for Grantee's Cable System during the term of this Franchise, Grantee agrees that it shall continue to conduct proof of performance tests on the Cable System in accordance with the standards that were in place on the Effective Date, or any generally applicable standards later adopted, at least once a year, and provide written results of such tests to the City upon request.

(E) The FCC semi-annual testing is conducted in January/February and July/August of each year. If the City contacts Grantee prior to the next test period (*i.e.*, before December 15

and June 15 respectively of each year), Grantee shall provide City with no less than seven (7) days prior written notice of the actual date(s) for FCC compliance testing. If City notifies Grantee by the December 15th and June 15th dates that it wishes to have a representative present during the next test(s), Grantee shall cooperate in scheduling its testing so that the representative can be present. Notwithstanding the above, all technical performance tests may be witnessed by representatives of the City.

(F) Grantee shall be required to promptly take such corrective measures as are necessary to correct any performance deficiencies fully and to prevent their recurrence as far as possible. Grantee's failure to correct deficiencies identified through this testing process shall be a material violation of this Franchise. Sites shall be re-tested following correction.

## SECTION 12. SERVICE AVAILABILITY, INTERCONNECTION AND SERVICE TO SCHOOLS AND PUBLIC BUILDINGS

### 12.1 Service Availability

(A) In General. Except as otherwise provided in herein, Grantee shall provide Cable Service within seven (7) days of a request by any Person within the City. For purposes of this Section, a request shall be deemed made on the date of signing a service agreement, receipt of funds by Grantee, receipt of a written request by Grantee or receipt by Grantee of a verified verbal request. Except as otherwise provided herein, Grantee shall provide such service:

(1) With no line extension charge except as specifically authorized elsewhere in this Franchise Agreement.

(2) At a non-discriminatory installation charge for a standard installation, consisting of a 125 foot drop connecting to an inside wall for Residential Subscribers, with additional charges for non-standard installations computed according to a non-discriminatory methodology for such installations, adopted by Grantee and provided in writing to the City;

(3) At non-discriminatory monthly rates for Residential Subscribers.

(B) Service to Multiple Dwelling Units. Consistent with this Section 12.1, the Grantee shall offer the individual units of a Multiple Dwelling Unit all Cable Services offered to other Dwelling Units in the City and shall individually wire units upon request of the property owner or renter who has been given written authorization by the owner; provided, however, that any such offering is conditioned upon the Grantee having legal access to said unit in the form of an access and wiring agreement that is mutually satisfactory to the Grantee and the property owner. The City acknowledges that the Grantee cannot control the dissemination of particular Cable Services beyond the point of demarcation at a Multiple Dwelling Unit.

(C) Subscriber Charges for Extensions of Service. Grantee agrees to extend its Cable System to all persons living in areas with a residential density of forty-five (45) residences per mile of Cable System plant and if the area is within 1,320 cable-bearing strand feet of Grantee's

existing distribution plant. If the residential density is less than forty-five (45) residences per 5,280 cable-bearing strand feet of trunk or distribution cable, service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by the Grantee and Subscribers in the area in which service may be expanded, the Grantee will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of residences per 5,280 cable-bearing strand feet of its trunk or distribution cable and whose denominator equals forty-five (45). Subscribers who request service hereunder will bear the remainder of the construction and other costs on a pro rata basis. The Grantee may require that the payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance.

## **12.2 Connection of Public Facilities**

Grantee shall, at no cost to the City, provide one outlet of Basic Service to all City owned and occupied buildings, schools and public libraries located in areas where Grantee provides Cable Service, so long as these facilities are already served or are located within 125 feet of its Cable System. For purposes of this subsection, "school" means all State-accredited K-12 public and private schools. Such obligation to provide free Cable Service shall not extend to areas of City buildings where the Grantee would normally enter into a commercial contract to provide such Cable Service (e.g., golf courses, airport restaurants and concourses, and recreation center work out facilities). Outlets of Basic and Digital Starter Service provided in accordance with this subsection may be used to distribute Cable Services throughout such buildings, provided such distribution can be accomplished without causing Cable System disruption and general technical standards are maintained. Such outlets may only be used for lawful purposes. The Cable Service provided shall not be distributed beyond the originally installed outlets without authorization from Grantee, which shall not be unreasonably withheld. Grantee is not required to provide free reception equipment for any complimentary account provided pursuant to this subsection.

## **SECTION 13. FRANCHISE VIOLATIONS**

### **13.1 Procedure for Remediating Franchise Violations**

(A) If the City reasonably believes that Grantee has failed to perform any obligation under this Franchise or has failed to perform in a timely manner, the City shall notify Grantee in writing, stating with reasonable specificity the nature of the alleged default. Grantee shall have thirty (30) days from the receipt of such notice to:

- (1) respond to the City, contesting the City's assertion that a default has occurred, and requesting a meeting in accordance with subsection (B), below;
- (2) cure the default; or,

(3) notify the City that Grantee cannot cure the default within the thirty (30) days, because of the nature of the default. In the event the default cannot be cured within thirty (30) days, Grantee shall promptly take all reasonable steps to cure the default and notify the City in writing and in detail as to the exact steps that will be taken and the projected completion date. In such case, the City may set a meeting in accordance with subsection (B) below to determine whether additional time beyond the thirty (30) days specified above is indeed needed, and whether Grantee's proposed completion schedule and steps are reasonable.

(B) If Grantee does not cure the alleged default within the cure period stated above, or by the projected completion date under subsection (A)(3), or denies the default and requests a meeting in accordance with (A)(1), or the City orders a meeting in accordance with subsection (A)(3), the City shall set a meeting to investigate said issues or the existence of the alleged default. The City shall notify Grantee of the meeting in writing and such meeting shall take place no less than thirty (30) days after Grantee's receipt of notice of the meeting. At the meeting, Grantee shall be provided an opportunity to be heard and to present evidence in its defense.

(C) If, after the meeting, the City determines that a default exists, the City shall order Grantee to correct or remedy the default or breach within fifteen (15) days or within such other reasonable time frame as the City shall determine. In the event Grantee does not cure within such time to the City's reasonable satisfaction, the City may:

(1) Recommend the revocation of this Franchise pursuant to the procedures in subsection 13.2; or,

(2) Recommend any other legal or equitable remedy available under this Franchise or any Applicable Law.

(D) The determination as to whether a violation of this Franchise has occurred shall be within the discretion of the City, provided that any such final determination may be subject to appeal to a court of competent jurisdiction under Applicable Law.

### **13.2 Revocation**

(A) In addition to revocation in accordance with other provisions of this Franchise, the City may revoke this Franchise and rescind all rights and privileges associated with this Franchise in the following circumstances, each of which represents a material breach of this Franchise:

(1) If Grantee fails to perform any material obligation under this Franchise or under any other agreement, ordinance or document regarding the City and Grantee;

(2) If Grantee willfully fails for more than forty-eight (48) hours to provide continuous and uninterrupted Cable Service;

(3) If Grantee attempts to evade any material provision of this Franchise or to practice any fraud or deceit upon the City or Subscribers; or

(4) If Grantee becomes insolvent, or if there is an assignment for the benefit of Grantee's creditors;

(5) If Grantee makes a material misrepresentation of fact in the application for or negotiation of this Franchise.

(B) Following the procedures set forth in subsection 13.1 and prior to forfeiture or termination of the Franchise, the City shall give written notice to the Grantee of its intent to revoke the Franchise and set a date for a revocation proceeding. The notice shall set forth the exact nature of the noncompliance.

(C) Any proceeding under the paragraph above shall be conducted by the City Council and open to the public. Grantee shall be afforded at least forty-five (45) days prior written notice of such proceeding.

(1) At such proceeding, Grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce evidence, and to question witnesses. A complete verbatim record and transcript shall be made of such proceeding and the cost shall be shared equally between the parties. The City Council shall hear any Persons interested in the revocation, and shall allow Grantee, in particular, an opportunity to state its position on the matter.

(2) Within ninety (90) days after the hearing, the City Council shall determine whether to revoke the Franchise and declare that the Franchise is revoked; or if the breach at issue is capable of being cured by Grantee, direct Grantee to take appropriate remedial action within the time and in the manner and on the terms and conditions that the City Council determines are reasonable under the circumstances. If the City determines that the Franchise is to be revoked, the City shall set forth the reasons for such a decision and shall transmit a copy of the decision to the Grantee. Grantee shall be bound by the City's decision to revoke the Franchise unless it appeals the decision to a court of competent jurisdiction within fifteen (15) days of the date of the decision.

(3) Grantee shall be entitled to such relief as the Court may deem appropriate.

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

### **13.3 Procedures in the Event of Termination or Revocation**

(A) If this Franchise expires without renewal after completion of all processes available under this Franchise and federal law or is otherwise lawfully terminated or revoked, the City may, subject to Applicable Law:

(1) Allow Grantee to maintain and operate its Cable System on a month-to-month basis or short-term extension of this Franchise for not less than six (6) months, unless a sale of the Cable System can be closed sooner or Grantee demonstrates to the City's satisfaction that it needs additional time to complete the sale; or

(2) Purchase Grantee's Cable System in accordance with the procedures set forth in subsection 13.4, below.

(B) In the event that a sale has not been completed in accordance with subsections (A)(1) and/or (A)(2) above, the City may order the removal of the above-ground Cable System facilities and such underground facilities from the City at Grantee's sole expense within a reasonable period of time as determined by the City. In removing its plant, structures and equipment, Grantee shall refill, at its own expense, any excavation that is made by it and shall leave all Right-of-Way, public places and private property in as good condition as that prevailing prior to Grantee's removal of its equipment without affecting the electrical or telephone cable wires or attachments. The indemnification and insurance provisions shall remain in full force and effect during the period of removal, and Grantee shall not be entitled to, and agrees not to request, compensation of any sort therefore.

(C) If Grantee fails to complete any removal required by subsection 13.3 (B) to the City's satisfaction, after written notice to Grantee, the City may cause the work to be done and Grantee shall reimburse the City for the costs incurred within thirty (30) days after receipt of an itemized list of the costs.

(D) The City may seek legal and equitable relief to enforce the provisions of this Franchise.

### **13.4 Purchase of Cable System**

(A) If at any time this Franchise is revoked, terminated, or not renewed upon expiration in accordance with the provisions of federal law, the City shall have the option to purchase the Cable System.

(B) The City may, at any time thereafter, offer in writing to purchase Grantee's Cable System. Grantee shall have thirty (30) days from receipt of a written offer from the City within which to accept or reject the offer.

(C) In any case where the City elects to purchase the Cable System, the purchase shall be closed within one hundred twenty (120) days of the date of the City's audit of a current profit

and loss statement of Grantee. The City shall pay for the Cable System in cash or certified funds, and Grantee shall deliver appropriate bills of sale and other instruments of conveyance.

(D) For the purposes of this subsection, the price for the Cable System shall be determined as follows:

(1) In the case of the expiration of the Franchise without renewal, at fair market value determined on the basis of Grantee's Cable System valued as a going concern, but with no value allocated to the Franchise itself. In order to obtain the fair market value, this valuation shall be reduced by the amount of any lien, encumbrance, or other obligation of Grantee which the City would assume.

(2) In the case of revocation for cause, the equitable price of Grantee's Cable System.

### **13.5 Receivership and Foreclosure**

(A) At the option of the City, subject to Applicable Law, this Franchise may be revoked one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of Grantee whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless:

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

(2) 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 Franchise, and have remedied all defaults under the Franchise. 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 Franchise.

(B) If there is a foreclosure or other involuntary sale of the whole or any part of the plant, property and equipment of Grantee, the City may serve notice of revocation on Grantee and to the purchaser at the sale, and the rights and privileges of Grantee under this Franchise shall be revoked thirty (30) days after service of such notice, unless:

(1) The City has approved the transfer of the Franchise, in accordance with the procedures set forth in this Franchise and as provided by law; and

(2) The purchaser has covenanted and agreed with the City to assume and be bound by all of the terms and conditions of this Franchise.

### **13.6 No Monetary Recourse Against the City**

Grantee shall not have any monetary recourse against the City or its officers, officials, boards, commissions, agents or employees for any loss, costs, expenses or damages arising out of any provision or requirement of this Franchise or the enforcement thereof, in accordance with the provisions of applicable federal, State and local law. The rights of the City under this Franchise are in addition to, and shall not be read to limit, any immunities the City may enjoy under federal, State or local law.

### **13.7 Alternative Remedies**

No provision of this Franchise shall be deemed to bar the right of the City to seek or obtain judicial relief from a violation of any provision of the Franchise or any rule, regulation, requirement or directive promulgated thereunder. Neither the existence of other remedies identified in this Franchise nor the exercise thereof shall be deemed to bar or otherwise limit the right of the City to recover monetary damages for such violations by Grantee, or to seek and obtain judicial enforcement of Grantee's obligations by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity.

### **13.8 Effect of Abandonment**

If the Grantee 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 operate the Cable System; designate another entity to operate the Cable System temporarily until the Grantee restores service under conditions acceptable to the City, or until the Franchise is revoked and a new franchisee is selected by the City; or obtain an injunction requiring the Grantee to continue operations. If the City is required to operate or designate another entity to operate the Cable System, the Grantee shall reimburse the City or its designee for all reasonable costs, expenses and damages incurred.

### **13.9 What Constitutes Abandonment**

The City shall be entitled to exercise its options in subsection 13.8 if:

(A) The Grantee fails to provide Cable Service in accordance with this Franchise over a substantial portion of the Franchise Area for four (4) consecutive days, unless the City authorizes a longer interruption of service; or

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

## SECTION 14. FRANCHISE RENEWAL AND TRANSFER

### 14.1 Renewal

(A) The City and Grantee agree that any proceedings undertaken by the City that relate to the renewal of the Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of federal or State law.

(B) In addition to the procedures set forth in said Section 626(a), the City agrees to notify Grantee of the completion of its assessments regarding the identification of future cable-related community needs and interests, as well as the past performance of Grantee under the then current Franchise term. Notwithstanding anything to the contrary set forth herein, Grantee and City agree that at any time during the term of the then current Franchise, while affording the public adequate notice and opportunity for comment, the City and Grantee may agree to undertake and finalize negotiations regarding renewal of the then current Franchise and the City may grant a renewal thereof. Grantee and City consider the terms set forth in this subsection to be consistent with the express provisions of Section 626 of the Cable Act.

### 14.2 Transfer of Ownership or Control

Neither the Grantee nor any other Person may transfer the Cable System or the Franchise without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. No transfer of control of the Grantee, defined as an acquisition of 51% or greater ownership interest in Grantee, shall take place without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. No consent shall be required, however, for (i) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or in the Cable System in order to secure indebtedness, or (ii) a transfer to an entity directly or indirectly owned or controlled by Comcast Corporation. Within thirty (30) days of receiving a request for consent, the City shall, in accordance with FCC rules and regulations, notify the Grantee in writing of the additional information, if any, it requires to determine the legal, financial and technical qualifications of the transferee or new controlling party. If the City has not taken final action on the Grantee's request for consent within one hundred twenty (120) days after receiving such request, consent shall be deemed granted.

## SECTION 15. SEVERABILITY

If any Section, subsection, paragraph, term or provision of this Franchise is determined to be illegal, invalid or unconstitutional by any court or agency of competent jurisdiction, such determination shall have no effect on the validity of any other Section, subsection, paragraph, term or provision of this Franchise, all of which will remain in full force and effect for the term of the Franchise.

## SECTION 16. MISCELLANEOUS PROVISIONS

### 16.1 Preferential or Discriminatory Practices Prohibited

**NO DISCRIMINATION IN EMPLOYMENT.** In connection with the performance of work under this Franchise, the Grantee agrees not to refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any Person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and the Grantee further agrees to insert the foregoing provision in all subcontracts hereunder. Throughout the term of this Franchise, Grantee shall fully comply with all equal employment or non-discrimination provisions and requirements of federal, State and local laws, and in particular, FCC rules and regulations relating thereto.

### 16.2 Notices

Throughout the term of the Franchise, each party shall maintain and file with the other a local address for the service of notices by mail. All notices shall be sent overnight delivery postage prepaid to such respective address and such notices shall be effective upon the date of mailing. These addresses may be changed by the City or the Grantee by written notice at any time. At the Effective Date of this Franchise:

Grantee's address shall be:

Comcast of Colorado/Pennsylvania/West Virginia, LLC  
8000 E. Iliff Ave.  
Denver, CO 80231  
Attn: Government Affairs Dept.

The City's address shall be:

City of Trinidad  
Attn: City Manager  
135 North Animas  
Trinidad, CO 81082

### 16.3 Descriptive Headings

The headings and titles of the Sections and subsections of this Franchise are for reference purposes only, and shall not affect the meaning or interpretation of the text herein.

### 16.4 Binding Effect

This Franchise shall be binding upon the parties hereto, their permitted successors and assigns.

### **16.5 No Joint Venture**

Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third Persons or the public in any manner which would indicate any such relationship with the other.

### **16.6 Waiver**

The failure of the City at any time to require performance by the Grantee of any provision hereof shall in no way affect the right of the City hereafter to enforce the same. Nor shall the waiver by the City of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision, or as a waiver of the provision itself or any other provision.

### **16.7 Reasonableness of Consent or Approval**

Whenever under this Franchise “reasonableness” is the standard for the granting or denial of the consent or approval of either party hereto, such party shall be entitled to consider public and governmental policy, moral and ethical standards as well as business and economic considerations.

### **16.8 Entire Agreement**

This Franchise and all Exhibits represent the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersede all prior oral negotiations between the parties.

IN WITNESS WHEREOF, this Franchise is signed in the name of the City of Trinidad, Colorado this \_\_\_ day of \_\_\_\_\_, 201\_.

ATTEST:

CITY OF TRINIDAD, COLORADO:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

RECOMMENDED AND APPROVED:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
City Manager

Accepted and approved this \_\_\_\_\_ day of \_\_\_\_\_, 201\_.

**COMCAST OF COLORADO/PENNSYLVANIA/WEST VIRGINIA, LLC**

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

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

DRAFT

**Colorado Communications and Utility Alliance  
Customer Service Standards**

**Introduction**

The Colorado Communications and Utilities Alliance ("CCUA") has created the following Customer Service Standards (the "Standards") for distribution and adoption by Members. The purpose of the Standards is to establish uniform requirements for the quality of service cable operators are expected to offer their customers in the metropolitan area. The Standards are subject to change from time to time.

The Franchise Authority encourages the Cable Operator to exceed these standards in their day-to-day operations and as such, understands that the Cable Operator may modify their operations in exceeding these standards.

The Standards incorporate the Customer Service Obligations published by the Federal Communications Commission (Section 76.309), April, 1993 and customer service standards of cable television service providers operating in Colorado. Based upon the CCUA's assessment of the needs of citizens in its members' jurisdictions, the CCUA adopted, modified and created standards specially tailored to members of the CCUA communities.

The Standards require the cable operator, in certain circumstances, to post a security fund or letter of credit ensuring Customer Service. The security fund is to be used when the cable company fails to respond to a citizen complaint that the franchising authority determines is valid, and to provide a mechanism by which to impose remedies for noncompliance. It is the sincere hope and intention of the CCUA that the security fund will never need to be drawn upon; however, the CCUA believes that some enforcement measures are necessary.

**COLORADO COMMUNICATIONS AND UTILITIES ALLIANCE  
CUSTOMER SERVICE STANDARDS**

**I. POLICY**

The Cable Operator should resolve citizen complaints without delay and interference from the Franchising Authority.

Where a given complaint is not addressed by the Cable Operator to the citizen's satisfaction, the Franchising Authority should intervene. In addition, where a pattern of unremedied complaints or noncompliance with the Standards is identified, the Franchising Authority should prescribe a cure and establish a reasonable deadline for implementation of the cure. If the noncompliance is not cured within established deadlines, monetary sanctions should be imposed to encourage compliance and deter future non-compliance.

These Standards are intended to be of general application and are expected to be met under normal operating conditions; however, the Cable Operator shall be relieved of any obligations hereunder if it is unable to perform due to a region-wide natural emergency or in the event of force majeure affecting a significant portion of the franchise area. The Cable Operator is free to exceed these Standards to the benefit of its Customers and such shall be considered performance for the purposes of these Standards.

These Standards supercede any contradictory or inconsistent provision in federal, state or local law (Source: 47 U.S.C. § 552(a)(1) and (d)); provided, however, that any provision in federal, state or local law, or in any original franchise agreement or renewal agreement, that imposes a higher obligation or requirement than is imposed by these Standards shall not be considered contradictory or inconsistent with these Standards. In the event of a conflict between these Standards and a Franchise Agreement, the Franchise Agreement shall control.

These Standards apply to the provision of any Cable Service by a Cable Operator over a Cable System within the City of Trinidad.

## II. DEFINITIONS

When used in these Customer Service Standards (the "Standards"), the following words, phrases, and terms shall have the meanings given below.

"Adoption" shall mean the process necessary to formally enact these Standards within the Franchising Authority's jurisdiction under applicable ordinances and laws.

"Affiliate" shall mean any person or entity owned or controlled by, or under common ownership or control with, a Cable Operator and provides any Cable Service or Other Service.

"Applicable Law" means, with respect to these Standards and any Cable Operator's privacy policies, any statute, ordinance, judicial decision, executive order or regulation having the force and effect of law and that determines the legal standing of a case or issue.

"Cable Operator" shall mean any person or group of persons: (A) who provides Cable Service over a Cable System and directly or through one or more affiliates owns a significant interest in such cable system; or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a Cable System. Source: 47 U.S.C. § 522(5).

"Cable Service" shall mean: (A) the one-way transmission to subscribers of: (i) video programming; or (ii) other programming service; and (B) subscriber interaction, if any, required for the selection or use of such video programming or other programming service. Source: 47 U.S.C. § 522(6). For purposes of this definition, "video programming" is programming provided by, or generally considered comparable to programming provided by a television broadcast station. Source: 47 U.S.C. § 522(20). "Other programming service" is information that a Cable Operator makes available to all subscribers generally. Source: 47 U.S.C. § 522(14).

"Cable System" shall mean 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 a community, but such term does not include: (A) a facility that serves only to retransmit the televisions signals of one or more television broadcast stations; or (B) a facility that serves subscribers without using any public right of way. Source: 47 U.S.C. § 522(7).

"City" shall mean the City of Trinidad, Colorado.

"Colorado Communications and Utilities Alliance" or "CCUA" shall mean an association comprised primarily of local governmental subdivisions of the State of Colorado, or any successor entity. The CCUA may, on behalf of its members, be delegated the authority to review, investigate or otherwise take some related role in the administration and/or enforcement of any functions under these Standards.

"Contractor" shall mean a person or entity that agrees by contract to furnish materials or perform services for another at a specified consideration.

"Customer" shall mean any person who receives any Cable Service from a Cable Operator.

"Customer Service Representative" or "CSR" shall mean any person employed with or under contract or subcontract to a Cable Operator to assist, or provide service to, Customers, whether by telephone, writing service or installation orders, answering Customers' questions in person, receiving and processing payments, or performing any other customer service-related tasks.

"Escalated complaint" shall mean a complaint that is referred to a Cable Operator by the Franchising Authority.

"Franchising Authority" shall mean the City.

"Necessary" shall mean required or indispensable.

"Non-cable-related purpose" shall mean any purpose that is not necessary to render or conduct a legitimate business activity related to a Cable Service or Other Service provided by a Cable Operator to a Customer. Market research, telemarketing, and other marketing of services or products that are not related to a Cable Service or Other Service provided by a Cable Operator to a Customer shall be considered Non-cable-related purposes.

"Normal Business Hours" shall mean those hours during which most similar businesses in the community are open to serve customers. In all cases, "Normal Business Hours" must include at least some evening hours one night per week, and include some weekend hours. Source: 47 C.F.R. § 76.309.

"Normal operating conditions" shall mean those service conditions which are within the control of a Cable Operator. Conditions not within the control of a Cable Operator include, but are not necessarily limited to, natural disasters, civil disturbances, power outages, telephone network outages and severe or unusual weather conditions. Conditions ordinarily within the control of a Cable Operator include, but are not necessarily limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods and maintenance or upgrade to the Cable System.

"Other Service(s)" shall mean any wire or radio communications service provided using any of the facilities of a Cable Operator that are used in the provision of Cable Service.

"Personally Identifiable Information" shall mean specific information about an identified Customer, including, but not be limited to, a Customer's: (a) login information for the use of Cable Service and management of a Customer's Cable Service account; (b) extent of viewing of video programming or Other Services; (c) shopping choices; (d) interests and opinions; (e) energy uses; (f) medical information; (g) banking data or information; or (h) any other personal or private information. "Personally Identifiable Information" shall not mean any aggregate information about Customers that does not identify particular persons, or information gathered by a Cable Operator necessary to install, repair or service equipment or Cable System facilities at a Customer's premises.

"Service interruption" or "interruption" shall mean (i) the loss or substantial impairment of picture and/or sound on one or more cable television channels.

"Service outage" or "outage" shall mean a loss or substantial impairment in reception on all channels.

"Subcontractor" shall mean a person or entity that enters into a contract to perform part or all of the obligations of another's contract.

"Writing" or "written" as the term applies to notification shall include electronic communications.

Any terms not specifically defined in these Standards shall be given their ordinary meaning, or where otherwise defined in applicable federal law, such terms shall be interpreted consistent with those definitions.

### **III. CUSTOMER SERVICE A.**

#### **Courtesy**

Cable Operator employees, contractors and subcontractors shall be courteous, knowledgeable and helpful and shall provide effective and satisfactory service in all contacts with Customers.

## B. Accessibility

1. A Cable Operator shall provide customer service centers/business offices ("Service Centers") which are conveniently located, and which are open during Normal Business Hours. Service Centers shall be fully staffed with Customer Service Representatives offering the following services to Customers who come to the Service Center: bill payment, equipment exchange, processing of change of service requests, and response to Customer inquiries and request.
  - a. Unless otherwise requested by the City, a Cable Operator shall post a sign at each Service Center, visible from the outside of the Service Center, advising Customers of its hours of operation and of the telephone number at which to contact the Cable Operator if the Service Center is not open at the times posted.
  - b. The Cable Operator shall use commercially reasonable efforts to implement and promote "self-help" tools and technology, in order to respond to the growing demand of Customers who wish to interact with the Cable Operator on the Customer's own terms and timeline and at their own convenience, without having to travel to a Service Center. Without limitation, examples of self-help tools or technology may include self-installation kits to Customers upon request; pre-paid mailers for the return of equipment upon Customer request; an automated phone option for Customer bill payments; and equipment exchanges at a Customer's residence in the event of damaged equipment. A Cable Operator shall provide free exchanges of faulty equipment at the Customer's address if the equipment has not been damaged in any manner due to the fault or negligence of the Customer.
2. A Cable Operator shall maintain local telephone access lines that shall be available twenty-four (24) hours a day, seven (7) days a week for service/repair requests and billing/service inquiries.
3. A Cable Operator shall have dispatchers and technicians on call twenty-four (24) hours a day, seven (7) days a week, including legal holidays.
4. If a customer service telephone call is answered with a recorded message providing the Customer with various menu options to address the Customer's concern, the recorded message must provide the Customer the option to connect to and speak with a CSR within sixty (60) seconds of the commencement of the recording. During Normal Business Hours, a Cable Operator shall retain sufficient Customer Service Representatives and telephone line capacity to ensure that telephone calls to technical service/repair and billing/service inquiry lines are answered by a CSR within thirty (30) seconds or less from the time a Customer chooses a menu option to speak directly with a CSR, or chooses a menu option that pursuant to the automated voice message, leads to a direct connection with a CSR. Under normal operating conditions, this thirty (30) second telephone answer time requirement standard shall be met no less than ninety percent (90%) of the time measured quarterly.
5. Under normal operating conditions, a Customer shall not receive a busy signal more than three percent (3%) of the time. This standard shall be met ninety percent (90%) or more of the time, measured quarterly.

## C. Responsiveness

1. Guaranteed Seven-Day Residential Installation
  - a. A Cable Operator shall complete all standard residential installations or modifications to service requested by Customers within seven (7) business days after the order is placed, unless a later date for installation is requested. "Standard" residential installations are those located up to one hundred twenty five feet (125') from the existing distribution system. If the Customer requests a nonstandard residential installation, or the Cable Operator determines that a nonstandard residential installation is

required, the Cable Operator shall provide the customer in advance with a total installation cost estimate and an estimated date of completion.

- b. All underground cable drops to the home shall be buried at a depth of no less than twelve inches (12"), or such other depth as may be required by the Franchise Agreement or local code provisions, or if there are no applicable Franchise or code requirements, at such other depths as may be agreed to by the parties if other construction concerns preclude the twelve inch requirement, and within no more than one (1) calendar week from the initial installation, or at a time mutually agreed upon between the Cable Operator and the Customer.

## 2. Residential Installation and Service Appointments

- a. The "appointment window" alternatives for specific installations, service calls and/or other installation activities will be either a specific time, or at a maximum, a four (4) hour time block between the hours of 8:00 a.m. and 6:00 p.m., six (6) days per week. A Cable Operator may schedule service calls and other installation activities outside of the above days and hours for the express convenience of Customers. For purposes of this subsection "appointment window" means the period of time in which the representative of the Cable Operator must arrive at the Customer's location.
- b. A Cable Operator may not cancel an appointment with a Customer after the close of business on the business day prior to the scheduled appointment unless the Customer's issue has otherwise been resolved.
- c. If a Cable Operator is running late for an appointment with a Customer and will not be able to keep the appointment as scheduled, the Cable Operator shall take reasonable efforts to contact the Customer promptly, but in no event later than the end of the appointment window. The appointment will be rescheduled, as necessary at a time that is convenient to the Customer, within Normal Business Hours or as may be otherwise agreed to between the Customer and Cable Operator.
- d. A Cable Operator shall be deemed to have responded to a request for service under the provisions of this section when a technician arrives within the agreed upon time, and, if the Customer is absent when the technician arrives, the technician leaves written notification of arrival and return time, and a copy of that notification is kept by the Cable Operator. In such circumstances, the Cable Operator shall contact the Customer within forty-eight (48) hours.

## 3. Residential Service Interruptions

- a. In the event of system outages resulting from Cable Operator equipment failure, the Cable Operator shall correct such failure within two (2) hours after the 3<sup>rd</sup> Customer call is received.
- b. All other service interruptions resulting from Cable Operator equipment failure shall be corrected by the Cable Operator by the end of the next calendar day.
- c. Records of Complaints.
  - i. A Cable Operator shall keep an accurate and comprehensive file of any complaints regarding the cable system or its operation of the cable system, in a manner consistent with the privacy rights of Customers, and the Cable Operator's actions in response to those complaints. These files shall remain available for viewing by the Franchising Authority during normal business hours at the Cable Operator's business office and shall be retained by the Cable Operator for a period of at least three (3) years.

- ii. Upon written request a Cable Operator shall provide the Franchising Authority an executive summary quarterly, which shall include information concerning customer complaints referred by the Franchising Authority to the Grantee and any other requirements of a Franchise Agreement but no personally identifiable information. These summaries shall be provided within fifteen (15) days after the end of each quarter. Once a request is made, it need not be repeated and quarterly executive summaries shall be provided by the Cable Operator until notified in writing by the Franchising Authority that such summaries are no longer required.
- iii. Upon written request a summary of service requests, identifying the number and nature of the requests and their disposition, shall also be completed by the Cable Operator for each quarter and submitted to the Franchising Authority by the fifteenth (15<sup>th</sup>) day of the month after each calendar quarter. Once a request is made, it need not be repeated and quarterly summary of service requests shall be provided by the Cable Operator until notified in writing by the Franchising Authority that such summaries are no longer required. Complaints shall be broken out by the nature of the complaint and the type of Cable service subject to the complaint.
- d. Records of Service Interruptions and Outages. A Cable Operator shall maintain records of all outages and reported service interruptions. Such records shall indicate the type of cable service interrupted, including the reasons for the interruptions. A log of all service interruptions shall be maintained and provided to the Franchising Authority quarterly, upon written request, within fifteen (15) days after the end of each quarter. Such records shall be submitted to the Franchising Authority with the records identified in Section 3.c.ii above if so requested in writing, and shall be retained by the Cable Operator for a period of three (3) years.
- e. All service outages and interruptions for any cause beyond the control of the Cable Operator shall be corrected within thirty-six (36) hours after the conditions beyond its control have been corrected.

4. TV Reception

- a. A Cable Operator shall provide clear television reception that meets or exceeds technical standards established by the United States Federal Communications Commission (the "FCC"). A Cable Operator shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Scheduled interruptions shall be preceded by notice and shall occur during periods of minimum use of the system, preferably between midnight and six a.m. (6:00 a.m.).
- b. If a Customer experiences poor video or audio reception attributable to a Cable Operator's equipment, the Cable Operator shall:
  - i. Assess the problem within one (1) day of notification;
  - ii. Communicate with the Customer regarding the nature of the problem and the expected time for repair; and
  - iii. Complete the repair within two (2) days of assessing the problem unless circumstances exist that reasonably require additional time.
- c. If an appointment is necessary to address any video or audio reception problem, the Customer may choose a block of time described in Section III.C.2.a. At the Customer's request, the Cable Operator shall repair the problem at a later time convenient to the Customer, during Normal Business Hours or at such other time as may be agreed to by the Customer and Cable Operator. A Cable Operator shall maintain periodic communications with a Customer during the time period in which problem

ascertainment and repair are ongoing, so that the Customer is advised of the status of the Cable Operator's efforts to address the problem.

#### 5. Problem Resolution

A Cable Operator's customer service representatives shall have the authority to provide credit for interrupted service, to waive fees, to schedule service appointments and to change billing cycles, where appropriate. Any difficulties that cannot be resolved by the customer service representative shall be referred to the appropriate supervisor who shall contact the Customer within four (4) hours and resolve the problem within forty eight (48) hours or within such other time frame as is acceptable to the Customer and the Cable Operator.

#### 6. Billing, Credits, and Refunds

- a. In addition to other options for payment of a Customer's service bill, a Cable Operator shall make available a telephone payment option where a Customer without account irregularities can enter payment information through an automated system, without the necessity of speaking to a CSR.
- b. A Cable Operator shall allow at least thirty (30) days from the beginning date of the applicable service period for payment of a customer's service bill for that period. If a Customer's service bill is not paid within that period of time the Cable Operator may apply an administrative fee to the customer's account. The administrative fee must reflect the average costs incurred by the Cable Operator in attempting to collect the past due payment in accordance with applicable law. If the Customer's service bill is not paid within forty-five (45) days of the beginning date of the applicable service period, the Cable Operator may perform a "soft" disconnect of the Customer's service. If a Customer's service bill is not paid within fifty-two (52) days of the beginning date of the applicable service period, the Cable Operator may disconnect the Customer's service, provided it has provided two (2) weeks notice to the Customer that such disconnection may result.
- c. The Cable Operator shall issue a credit or refund to a customer within 30 days after determining the Customer's entitlement to a credit or refund.
- d. Whenever the Cable Operator offers any promotional or specially priced service(s) its promotional materials shall clearly identify and explain the specific terms of the promotion, including but not limited to manner in which any payment credit will be applied.

#### 7. Treatment of Property

To the extent a Franchise Agreement does not contain the following procedures for treatment of property, the Cable Operator shall comply with the procedures set forth in this Section.

- a. The Cable Operator shall keep tree trimming to a minimum. Trees and shrubs or other landscaping damaged by a Cable Operator or any employee or agent of a Cable Operator during installation or construction shall be restored to their prior condition or replaced within seven (7) days, unless seasonal conditions require a longer time, in which case such restoration or replacement shall be made within seven (7) days after conditions permit. Trees and shrubs on private property shall not be removed without the prior permission of the owner or legal tenant of the property on which they are located. This provision shall be in addition to, and shall not supersede, any requirement in any Franchise Agreement.
- b. The Cable Operator shall, at its own cost and expense, and in a manner approved by the property owner and the Franchising Authority, restore any private property to as good condition as before the work causing such disturbance was initiated. A Cable Operator shall repair, replace or compensate a property owner for any damage resulting from the Cable Operator's installation, construction, service

or repair activities. If compensation is requested by the customer for damage caused by any Cable Operator activity, the Cable Operator shall reimburse the property owner one hundred percent (100%) of the actual cost of the damage.

- c. Except in the case of an emergency involving public safety or service interruption to a large number of customers, a Cable Operator shall give reasonable notice to property owners or legal tenants prior to entering upon private premises, and the notice shall specify the work to be performed; provided that in the case of construction operations such notice shall be delivered or provided at least twenty-four (24) hours prior to entry, unless such notice is waived by the customer. For purposes of this subsection, "reasonable notice" shall be considered:
  - i. For pedestal installation or similar major construction, seven (7) days.
  - ii. For routine maintenance, such as adding or dropping service, tree trimming and the like, reasonable notice given the circumstances. Unless a Franchise Agreement has a different requirement, reasonable notice shall require, at a minimum, prior notice to a property owner or tenant, before entry is made onto that person's property.
  - iii. For emergency work a Cable Operator shall attempt to contact the property owner or legal tenant in person, and shall leave a door hanger notice in the event personal contact is not made. Door hangars must describe the issue and provide contact information where the property owner or tenant can receive more information about the emergency work.
- d. Nothing herein shall be construed as authorizing access or entry to private property, or any other property, where such right to access or entry is not otherwise provided by law.
- e. Cable Operator personnel shall clean all areas surrounding any work site and ensure that all cable materials have been disposed of properly.

#### **D. Services for Customers with Disabilities**

1. For any customer with a disability, a Cable Operator shall deliver and pick up equipment at Customers' homes at no charge unless the malfunction was caused by the actions of the Customer. In the case of malfunctioning equipment, the technician shall provide replacement equipment, hook it up and ensure that it is working properly, and shall return the defective equipment to the Cable Operator.
2. A Cable Operator shall provide either TTY, TDD, TYY, VRS service or other similar service that are in compliance with the Americans With Disabilities Act and other applicable law, with trained operators who can provide every type of assistance rendered by the Cable Operator's customer service representatives for any hearing-impaired customer at no charge.
3. A Cable Operator shall provide free use of a remote control unit to mobility-impaired (if disabled, in accordance with Section III.D.4) customers.
4. Any Customer with a disability may request the special services described above by providing a Cable Operator with a letter from the Customer's physician stating the need, or by making the request to the Cable Operator's installer or service technician, where the need for the special services can be visually confirmed.

#### **E. Cable Services Information**

At any time a Customer or prospective Customer may request, a Cable Operator shall provide the following information, in clear, concise written form, easily accessible and located on Cable Operator's website (and in Spanish, when requested by the Customer):

- a. Products and services offered by the Cable Operator, including its channel lineup;
  - b. The Cable Operator's complete range of service options and the prices for these services;
  - c. The Cable Operator's billing, collection and disconnection policies;
  - d. Privacy rights of Customers;
  - e. All applicable complaint procedures, including complaint forms and the telephone numbers and mailing addresses of the Cable Operator, and the FCC;
  - f. Use and availability of parental control/lock out device;
  - g. Special services for Customers with disabilities; and
  - h. Days, times of operation, and locations of the service centers.
2. At a Customer's request, a Cable Operator shall make available either a complete copy of these Standards and any other applicable customer service standards, or a summary of these Standards, in a format to be approved by CCA and the Franchising Authority, which shall include, at a minimum, the URL address of a website containing these Standards in their entirety; provided, however, that if the CCA or Franchising Authority does not maintain a website with a complete copy of these Standards, a Cable Operator shall be under no obligation to do so. If acceptable to a Customer, Cable Operator may fulfill customer requests for any of the information listed in this Section by making the requested information available electronically, such as on a website or by electronic mail.
  3. Upon written request, a Cable Operator shall meet annually with the Franchising Authority to review the format of the Cable Operator's bills to customers. Whenever the Cable Operator makes substantial changes to its billing format, it will contact the Franchising Authority at least thirty (30) days prior to the time such changes are to be effective, in order to inform the Franchising Authority of such changes.
  4. Copies of notices provided to the Customer in accordance with subsection 5 below shall be filed (by fax or email acceptable) concurrently with the Franchising Authority and the CCA.
  5. A Cable Operator shall provide customers with written notification of any change in rates for nondiscretionary cable services, and for service tier changes that result in a deletion of programming from a customer's service tier, at least thirty (30) days before the effective date of change. For purposes of this section, "nondiscretionary" means the subscribed tier, and any other Cable Services that a Customer has subscribed to, at the time the change in rates are announced by the Cable Operator.
  6. All officers, agents, and employees of the Cable Operator or its contractors or subcontractors who are in personal contact with customers and/or when working on public property shall wear on their outer clothing identification cards bearing their name and photograph and identifying them as representatives of the Cable Operator. The Cable Operator shall account for all identification cards at all times. Every vehicle of the Cable Operator shall be clearly visually identified to the public as working for the Cable Operator. Whenever a Cable Operator work crew is in personal contact with customers or public employees, a supervisor must be able to communicate clearly with the customer or public employee. Every vehicle of a subcontractor or contractor shall be labeled with the name of the contractor and further identified as contracting or subcontracting for the Cable Operator.
  7. Each CSR, technician or employee of the Cable Operator in each contact with a customer shall state the estimated cost of the service, repair, or installation orally prior to delivery of the service or before any work is performed, and shall provide the customer with an oral statement of the total charges before terminating

the telephone call or before leaving the location at which the work was performed. A written estimate of the charges shall be provided to the customer before the actual work is performed.

## **F. Customer Privacy**

1. Cable Customer Privacy. In addition to complying with the requirements in this subsection, a Cable Operator shall fully comply with all obligations under 47 U.S.C. Section 551.
2. Collection and Use of Personally Identifiable Information.
  - a. A Cable Operator shall not use the Cable System to collect, monitor or observe Personally Identifiable Information without the prior affirmative written or electronic consent of the Customer unless, and only to the extent that such information is: (i) used to detect unauthorized reception of cable communications; or (ii) necessary to render a Cable Service or Other Service provided by the Cable Operator to the Customer and as otherwise authorized by applicable law.
  - b. A Cable Operator shall take such actions as are necessary using then-current industry standard practices to prevent any Affiliate from using the facilities of the Cable Operator in any manner, including, but not limited to, sending data or other signals through such facilities, to the extent such use will permit an Affiliate unauthorized access to Personally Identifiable Information on equipment of a Customer (regardless of whether such equipment is owned or leased by the Customer or provided by a Cable Operator) or on any of the facilities of the Cable Operator that are used in the provision of Cable Service. This subsection F.2.b shall not be interpreted to prohibit an Affiliate from obtaining access to Personally Identifiable Information to the extent otherwise permitted by this subsection F.
  - c. A Cable Operator shall take such actions as are necessary using then-current industry standard practices to prevent a person or entity (other than an Affiliate) from using the facilities of the Cable Operator in any manner, including, but not limited to, sending data or other signals through such facilities, to the extent such use will permit such person or entity unauthorized access to Personally Identifiable Information on equipment of a Customer (regardless of whether such equipment is owned or leased by the Customer or provided by a Cable Operator) or on any of the facilities of the Cable Operator that are used in the provision of Cable Service.
3. Disclosure of Personally Identifiable Information. A Cable Operator shall not disclose Personally Identifiable Information without the prior affirmative written or electronic consent of the Customer, unless otherwise authorized by applicable law.
  - a. A minimum of thirty (30) days prior to making any disclosure of Personally Identifiable Information of any Customer for any Non-Cable related purpose as provided in this subsection F.3.a, where such Customer has not previously been provided the notice and choice provided for in subsection III.F.9, the Cable Operator shall notify each Customer (that the Cable Operator intends to disclose information about) of the Customer's right to prohibit the disclosure of such information for Non-cable related purposes. The notice to Customers may reference the Customer to his or her options to state a preference for disclosure or non-disclosure of certain information, as provided in subsection III.F.10.
  - b. A Cable Operator may disclose Personally Identifiable Information only to the extent that it is necessary to render, or conduct a legitimate business activity related to, a Cable Service or Other Service provided by the Cable Operator to the Customer.
  - c. To the extent authorized by applicable law, a Cable Operator may disclose Personally Identifiable Information pursuant to a subpoena, court order, warrant or other valid legal process authorizing such disclosure.

4. Access to Information. Any Personally Identifiable Information collected and maintained by a Cable Operator shall be made available for Customer examination within thirty (30) days of receiving a request by a Customer to examine such information about himself or herself at the local offices of the Cable Operator or other convenient place within the City designated by the Cable Operator, or electronically, such as over a website. Upon a reasonable showing by the Customer that such Personally Identifiable Information is inaccurate, a Cable Operator shall correct such information.

5. Privacy Notice to Customers

a. A Cable Operator shall annually mail or provide a separate, written or electronic copy of the privacy statement to Customers consistent with 47 U.S.C. Section 551(a)(1) and shall provide a Customer a copy of such statement at the time the Cable Operator enters into an agreement with the Customer to provide Cable Service. The written notice shall be in a clear and conspicuous format, which, at a minimum, shall be in a comparable font size to other general information provided to Customers about their account as it appears on either paper or electronic Customer communications.

b. In or accompanying the statement required by subsection F.5.a, a Cable Operator shall state substantially the following message regarding the disclosure of Customer information: "Unless a Customer affirmatively consents electronically or in writing to the disclosure of personally identifiable information, any disclosure of personally identifiable information for purposes other than to the extent necessary to render, or conduct a legitimate business activity related to, a Cable Service or Other Service, is limited to:

i. Disclosure pursuant to valid legal process authorized by applicable law.

ii. Disclosure of the name and address of a Customer subscribing to any general programming tiers of service and other categories of Cable Services provided by the Cable Operator that do not directly or indirectly disclose: (A) a Customer's extent of viewing of a Cable Service or Other Service provided by the Cable Operator; (B) the extent of any other use by a Customer of a Cable Service; (C) the nature of any transactions made by a Customer over the Cable System; or (D) the nature of programming or websites that a Customer subscribes to or views (*i.e.*, a Cable Operator may only disclose the fact that a person subscribes to a general tier of service, or a package of channels with the same type of programming); provided that with respect to the nature of websites subscribed to or viewed, these are limited to websites accessed by a Customer in connection with programming available from their account for Cable Services.

c. The notice shall also inform the Customers of their right to prohibit the disclosure of their names and addresses in accordance with subsection F.3.a. If a Customer exercises his or her right to prohibit the disclosure of name and address as provided in subsection F.3.a or this subsection, such prohibition against disclosure shall remain in effect, unless and until the Customer subsequently changes its disclosure preferences as described in subsection F.9 below.

6. Privacy Reporting Requirements.

The Cable Operator shall include in its regular periodic reports to the Franchising Authority required by its Franchise Agreement information summarizing:

a. The type of Personally Identifiable Information that was actually collected or disclosed by Cable Operator during the reporting period;

b. For each type of Personally Identifiable Information collected or disclosed, a statement from an authorized representative of the Cable Operator certifying that the Personally Identifiable Information collected or disclosed was: (A) collected or disclosed to the extent Necessary to render, or conduct a

legitimate business activity related to, a Cable Service or Other Service provided by the Cable Operator; (B) used to the extent Necessary to detect unauthorized reception of cable communications; (C) disclosed pursuant to valid legal process authorized by applicable law; or (D) a disclosure of Personally Identifiable Information of particular subscribers, but only to the extent affirmatively consented to by such subscribers in writing or electronically, or as otherwise authorized by applicable law;

- c. The standard industrial classification (SIC) codes or comparable identifiers pertaining to any entities to whom such Personally Identifiable Information was disclosed, except that a Cable Operator need not provide the name of any court or governmental entity to which such disclosure was made pursuant to valid legal process authorized by applicable law; and
  - d. The general measures that have been taken to prevent the unauthorized access to Personally Identifiable Information by a person other than the Customer or the Cable Operator. A Cable Operator shall meet with Franchising Authority if requested to discuss technology used to prohibit unauthorized access to Personally Identifiable Information by any means.
7. Nothing in this subsection III.F shall be construed to prevent the Franchising Authority from obtaining Personally Identifiable Information to the extent not prohibited by Section 631 of the Communications Act, 47 U.S.C. Section 551 and applicable laws.
8. Destruction of Personally Identifiable Information. A Cable Operator shall destroy any Personally Identifiable Information if the information is no longer necessary for the purpose for which it was collected and there are no pending requests or orders for access to such information under subsection 4 of this subsection III.F, pursuant to a court order or other valid legal process, or pursuant to applicable law.
9. Notice and Choice for Customers. The Cable Operator shall at all times make available to Customers one or more methods for Customers to use to prohibit or limit disclosures, or permit or release disclosures, as provided for in this subsection III.F. These methods may include, for example, online website "preference center" features, automated toll-free telephone systems, live toll-free telephone interactions with customer service agents, in-person interactions with customer service personnel, regular mail methods such as a postage paid, self-addressed post card, an insert included with the Customer's monthly bill for Cable Service, the privacy notice specified in subsection III.F.5, or such other comparable methods as may be provided by the Cable Operator. Website "preference center" features shall be easily identifiable and navigable by Customers, and shall be in a comparable size font as other billing information provided to Customers on a Cable Operator's website. A Customer who provides the Cable Operator with permission to disclose Personally Identifiable Information through any of the methods offered by a Cable Operator shall be provided follow-up notice, no less than annually, of the Customer's right to prohibit these disclosures and the options for the Customer to express his or her preference regarding disclosures. Such notice shall, at a minimum, be provided by an insert in the Cable Operator's bill (or other direct mail piece) to the Customer, or a notice or message printed on the Cable Operator's bill to the Customer, and on the Cable Operator's website when a Customer logs in to view his or her Cable Service account options. The form of such notice shall also be provided on an annual basis to the Franchising Authority. These methods of notification to Customers may also include other comparable methods as submitted by the Cable Operator and approved by the Franchising Authority in its reasonable discretion.

## G. Safety

A Cable Operator shall install and locate its facilities, cable system, and equipment in compliance with all federal, state, local, and company safety standards, and in such manner as shall not unduly interfere with or endanger persons or property. Whenever a Cable Operator receives notice that an unsafe condition exists with respect to its equipment, the Cable Operator shall investigate such condition immediately and shall take such measures as are necessary to remove or eliminate any unsafe condition.

## **H. Cancellation of New Services**

In the event that a new customer requests installation of Cable Service and is unsatisfied with their initial Cable Service, and provided that the customer so notifies the Cable Operator of their dissatisfaction within 30 days of initial installation, then such customer can request disconnection of Cable Service within 30 days of initial installation, and the Cable Operator shall provide a credit to the customer's account consistent with this Section. The customer will be required to return all equipment in good working order; provided such equipment is returned in such order, then the Cable Operator shall refund the monthly recurring fee for the new customer's first 30 days of Cable Service and any charges paid for installation. This provision does not apply to existing customers who request upgrades to their Cable Service, to discretionary Cable Service such as PPV or movies purchased and viewed On Demand, or to customer moves and/or transfers of Cable Service. The service credit shall be provided in the next billing cycle.

## **IV. COMPLAINT PROCEDURE**

### **A. Complaints to a Cable Operator**

1. A Cable Operator shall establish written procedures for receiving, acting upon, and resolving customer complaints, and crediting customer accounts and shall have such procedures printed and disseminated at the Cable Operator's sole expense, consistent with Section III.E.1.e of these Standards.
2. Such written procedures shall prescribe a simple manner in which any customer may submit a complaint by telephone or in writing to a Cable Operator that it has violated any provision of these Customer Service Standards, any terms or conditions of the customer's contract with the Cable Operator, or reasonable business practices. If a representative of the Franchising Authority notifies the Cable Operator of a customer complaint that has not previously been made by the customer to the Cable Operator, the complaint shall be deemed to have been made by the customer as of the date of the Franchising Authority's notice to the Cable Operator.
3. At the conclusion of the Cable Operator's investigation of a customer complaint, but in no more than ten (10) calendar days after receiving the complaint, the Cable Operator shall notify the customer of the results of its investigation and its proposed action or credit.
4. A Cable Operator shall also notify the customer of the customer's right to file a complaint with the Franchising Authority in the event the customer is dissatisfied with the Cable Operator's decision, and shall thoroughly explain the necessary procedures for filing such complaint with the Franchising Authority.
5. A Cable Operator shall immediately report all customer Escalated complaints that it does not find valid to the Franchising Authority.
6. A Cable Operator's complaint procedures shall be filed with the Franchising Authority prior to implementation.

### **B. Complaints to the Franchising Authority**

1. Any customer who is dissatisfied with any proposed decision of the Cable Operator or who has not received a decision within the time period set forth below shall be entitled to have the complaint reviewed by the Franchising Authority.
2. The customer may initiate the review either by calling the Franchising Authority or by filing a written complaint together with the Cable Operator's written decision, if any, with the Franchising Authority.

3. The customer shall make such filing and notification within twenty (20) days of receipt of the Cable Operator's decision or, if no decision has been provided, within thirty (30) days after filing the original complaint with the Cable Operator.
4. If the Franchising Authority decides that further evidence is warranted, the Franchising Authority shall require the Cable Operator and the customer to submit, within ten (10) days of notice thereof, a written statement of the facts and arguments in support of their respective positions.
5. The Cable Operator and the customer shall produce any additional evidence, including any reports from the Cable Operator, which the Franchising Authority may deem necessary to an understanding and determination of the complaint.
6. The Franchising Authority shall issue a determination within fifteen (15) days of receiving the customer complaint, or after examining the materials submitted, setting forth its basis for the determination.
7. The Franchising Authority may extend these time limits for reasonable cause and may intercede and attempt to negotiate an informal resolution.

### **C. Security Fund or Letter of Credit**

A Cable operator shall comply with any Franchise Agreement regarding Letters of Credit. If a Franchise Agreement is silent on Letter of Credit the following shall apply:

1. Within thirty (30) days of the written notification to a Cable Operator by the Franchising Authority that an alleged Franchise violation exists, a Cable Operator shall deposit with an escrow agent approved by the Franchising Authority fifty thousand dollars (\$50,000) or, in the sole discretion of the Franchising Authority, such lesser amount as the Franchising Authority deems reasonable to protect subscribers within its jurisdiction. Alternatively, at the Cable Operator's discretion, it may provide to the Franchising Authority an irrevocable letter of credit in the same amount.
  - a. A letter of credit or cash deposit, with the approval of the Franchising Authority, may be posted jointly for more than one member of the CCUA, and may be administered, and drawn upon, jointly by the CCUA or drawn upon individually by each member; provided, however, that if such letter of credit or cash deposit is provided to CCUA on behalf of more than one of its members, the letter of credit or cash deposit may, in the sole discretion of CCUA and its effected members, be required in an amount not to exceed one hundred thousand dollars (\$100,000).
  - b. The escrowed funds or letter of credit shall constitute the "Security Fund" for ensuring compliance with these Standards for the benefit of the Franchising Authority. The escrowed funds or letter of credit shall be maintained by a Cable Operator at the amount initially required, even if amounts are withdrawn pursuant to any provision of these Standards, until any claims related to the alleged Franchise violation(s) are paid in full.
2. The Franchising Authority may require the Cable Operator to increase the amount of the Security Fund if it finds that new risk factors exist that necessitate such an increase.
3. The Security Fund shall serve as security for the payment of any penalties, fees, charges or credits as provided for herein and for the performance by a Cable Operator of all its obligations under these Customer Service Standards.
4. The rights reserved to the Franchising Authority with respect to the Security Fund are in addition to all other rights of the Franchising Authority, whether reserved by any applicable franchise agreement or

authorized by law, and no action, proceeding or exercise of a right with respect to same shall in any way affect, or diminish, any other right the Franchising Authority may otherwise have.

**D. Verification of Compliance**

A Cable Operator shall establish its compliance with any or all of the standards required through annual reports that demonstrate said compliance, or as requested by the Franchising Authority.

**E. Procedure for Remedying Violations**

1. If the Franchising Authority has reason to believe that a Cable Operator has failed to comply with any of these Standards, or has failed to perform in a timely manner, the Franchising Authority may pursue the procedures in its Franchise Agreement to address violations of these Standards in a like manner as other franchise violations are considered.
2. Following the procedures set forth in any Franchise Agreement governing the manner to address alleged Franchise violations, if the Franchising Authority determines in its sole discretion that the noncompliance has been substantiated, in addition to any remedies that may be provided in the Franchise Agreement, the Franchising Authority may:
  - a. Impose assessments of up to one thousand dollars (\$1,000.00) per day, to be withdrawn from the Security Fund in addition to any franchise fee until the non-compliance is remedied;
  - b. Order such rebates and credits to affected customers as in its sole discretion it deems reasonable and appropriate for degraded or unsatisfactory services that constituted noncompliance with these Standards;
  - c. Reverse any decision of the Cable Operator in the matter;
  - d. Grant a specific solution as determined by the Franchising Authority; and/or
  - e. Except for in emergency situations, withhold licenses and permits for work by the Cable Operator or its subcontractors in accordance with applicable law.

**V. MISCELLANEOUS**

**A. Severability**

Should any section, subsection, paragraph, term, or provision of these Standards be determined to be illegal, invalid, or unconstitutional by any court or agency of competent jurisdiction with regard thereto, such determination shall have no effect on the validity of any other section, subsection, paragraph, term, or provision of these Standards, each of the latter of which shall remain in full force and effect.

**B. Non-Waiver**

Failure to enforce any provision of these Standards shall not operate as a waiver of the obligations or responsibilities of a Cable Operator under said provision, or any other provision of these Standards.

**ORDINANCE NO. 1880**

AN ORDINANCE REPEALING AND RE-ENACTING § 18-1 OF THE TRINIDAD CITY CODE, AND AMENDING AND EXTENDING THE EXISTING CABLE TELEVISION SYSTEM FRANCHISE AGREEMENT WITH COMCAST OF COLORADO/PENNSYLVANIA/WEST VIRGINIA, LLC, THROUGH MARCH 31, 2014

WHEREAS, Chapter XI, § 11.1, of the Charter of the City of Trinidad, Colorado, confers upon the City Council “all municipal powers relating to all utilities and franchises including, but without limitation to, all powers and authority now existing and which may be hereafter provided by the Constitution or Statutes of the State of Colorado, or by ordinance or by this Charter”; and

WHEREAS, the City and Comcast of Colorado/Pennsylvania/West Virginia, LLC (“Comcast”) are parties to a Cable Television System Franchise Agreement granted by Ordinance No. 1577 on December 27, 1997 (“**Franchise Agreement**”), which provides for Comcast’s operation and maintenance of a cable television system utilizing public rights-of-way within the City’s jurisdiction; and

WHEREAS, the Franchise Agreement, which has been extended pursuant to Ordinance Nos. 1847, 1852, and 1873, is scheduled to expire on March 31, 2009; and

WHEREAS, the City Council hereby finds and declares that it would serve the public interest to renew the Franchise Agreement with Comcast, subject to the terms, conditions, and mutual covenants set forth in the Franchise Renewal Agreement incorporated herein.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TRINIDAD, COLORADO, that:

1. **Repeal and Re-Enactment.** Section 18-1 of the Trinidad City Code is hereby repealed in its entirety and re-enacted as follows:

**Section 18-1. Approval of Cable Television System Franchise Agreement with Comcast of Colorado/Pennsylvania/West Virginia, LLC**

The City of Trinidad, Colorado, acting by and through its Mayor and City Council, having previously approved a CABLE TELEVISION SYSTEM FRANCHISE AGREEMENT with Century Trinidad Cable Television Corp., which agreement is attached hereto and incorporated herein by this reference as if fully set forth in this Ordinance, does hereby approve a FRANCHISE RENEWAL AGREEMENT with Comcast of Colorado/Pennsylvania/West Virginia, LLC, successor and assignee to Century Trinidad Cable Television Corp., which renewal agreement is attached hereto and incorporated herein by this reference as if fully set forth in this Ordinance.

2. **Franchise Renewal.** The existing Cable Television System Franchise Agreement between the City of Trinidad and Comcast, which has been incorporated into Chapter 18 of the Code of Ordinances of the City of Trinidad, shall be extended through March 31, 2014, subject to the terms, conditions, and mutual covenants set forth in the Franchise Renewal Agreement attached hereto and incorporated herein by this reference as if fully set forth in this Ordinance.

3. **Authorization.** The Mayor and City Clerk are hereby authorized to execute on behalf of the City the Franchise Renewal Agreement attached hereto and incorporated herein as if fully set forth in this Ordinance.

INTRODUCED BY COUNCILMEMBER TOUPAL, READ AND ORDERED PUBLISHED this 3<sup>rd</sup> day of March, 2009.

FINALLY PASSED AND APPROVED this 17<sup>th</sup> day of March, 2009.

EFFECTIVE DATE OF THIS ORDINANCE SHALL BE the 27th day of March, 2009.

\_\_\_\_\_  
/s/JOSEPH A. REORDA, MAYOR

ATTEST:

\_\_\_\_\_  
/S/AUDRA FATUR, CITY CLERK

PUBLISH: FRIDAY, MARCH 20, 2009  
FURNISH PROOF OF PUBLICATION

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**FRANCHISE RENEWAL AGREEMENT**

This Franchise Renewal Agreement ("**Renewal Agreement**") is entered into this 17th day of March, 2009, between the CITY OF TRINIDAD, COLORADO, a municipal corporation of the State of Colorado (hereinafter, "**Grantor**" or the "**City**"), and COMCAST OF COLORADO/PENNSYLVANIA/WEST VIRGINIA, LLC, a limited liability company of the State of Delaware (hereinafter, "**Grantee**").

**RECITALS**

WHEREAS, Chapter XI, § 11.1, of the Charter of the City of Trinidad, Colorado, confers upon the City Council "all municipal powers relating to all utilities and franchises including, but without limitation to, all powers and authority now existing and which may be hereafter provided by the Constitution or Statutes of the State of Colorado, or by ordinance or by this Charter"; and

WHEREAS, in accordance with Federal and State law and local Charter, Grantor and Century Trinidad Cable Television Corp. executed a Cable Television System Franchise Agreement dated December 27, 1997, and granted by Trinidad City Ordinance No. 1577, and recorded with the Las Animas County Clerk and Recorder at Reception No. 629622, Book No. 954, and Page No. 875 ("**Franchise Agreement**"), pursuant to which Grantor granted a non-exclusive, revocable franchise for the installation, operation, and maintenance of a cable television system within its corporate limits; and

WHEREAS, Grantee is the assignee to said Franchise Agreement; and

WHEREAS, the City Council hereby finds and declares that it would serve the public interest to renew the Franchise Agreement with Grantee, subject to the terms, conditions, and mutual covenants contained herein.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, Grantor and Grantee agree as follows:

**ARTICLE 1. RENEWAL OF FRANCHISE**

1.1 Grant of Franchise.

The Cable System Franchise granted by Grantor on January 3, 1998, and now held by Grantee is hereby renewed, subject to the terms, conditions, and mutual covenants contained herein. This grant confers upon Grantee a nonexclusive and revocable authorization to make reasonable and lawful use of the public streets and public easements within the Franchise Area to construct, operate, maintain, reconstruct, rebuild, and upgrade a Cable System for the purpose of providing cable television services.

1.2 Effective Date.

The effective date of this Renewal Agreement shall be April 1, 2009 (or ten (10) days after adoption of this Renewal Agreement by Grantor, whichever occurs later), unless Grantee fails to file the unconditional acceptance of this Renewal Agreement, in which event the Franchise shall be subject to cancellation by Grantor.

1.3 Duration.

This Renewal Agreement shall commence upon its Effective Date and shall expire five (5) years thereafter on March 31, 2014, unless renewed, revoked, or terminated sooner as provided in the Franchise Agreement.

Initials:  GRANTEE  GRANTOR

1.4 Continuity of Terms.

Unless amended herein, all terms and conditions contained in the Franchise Agreement shall remain in full force and effect throughout the duration of this Renewal Agreement.

1.5 Competitive Equity.

- (A) Grantee acknowledges and agrees that Grantor reserves the right to grant one or more additional franchises to provide Cable Service within the Franchise Area; provided, Grantor agrees that it shall amend this Franchise to include any material terms or conditions that it makes available to the new entrant within ninety (90) days of Grantee's request, so as to ensure that the regulatory and financial burdens on each entity are materially equivalent. "Material terms and conditions" include, without limitation: franchise fees; insurance; system build-out requirements; security instruments; public, educational, and governmental Access Channels and support; customer service standards; required reports and related record keeping; and notice and opportunity to cure breaches. If any such additional or competitive franchise is granted by Grantor which, in the reasonable opinion of Grantee, contains more favorable or less burdensome terms or conditions than this Franchise, Grantor agrees that it shall amend this Franchise to include any more favorable or less burdensome terms or conditions in a manner mutually agreed upon by Grantor and Grantee. The parties agree that this provision shall not require a word-for-word identical franchise or authorization for a competitive entity so long as the regulatory and financial burdens on each entity are materially equivalent.
- (B) In the event an application for a new cable television franchise is filed with Grantor proposing to serve the Franchise Area, in whole or in part, Grantor shall make a good faith effort to provide notice of such application upon Grantee prior to acting on the application.
- (C) In the event that a wireline multichannel video programming distributor provides video service to the residents of the City under the authority granted by federal or State legislation or other regulatory entity, Grantee shall have a right to request Franchise amendments that relieve Grantee of regulatory burdens that create a competitive disadvantage to Grantee. In requesting amendments, Grantee shall file a petition seeking to amend the Franchise. Such petition shall: (i) indicate the presence of such wireline competitor; (ii) identify the basis for Grantee's belief that certain provisions of the Franchise place Grantee at a competitive disadvantage; and (iii) identify the regulatory burdens to be amended or repealed in order to eliminate the competitive disadvantage. Grantor shall not unreasonably withhold consent to Grantee's petition.

**ARTICLE 2. FRANCHISE FEE AND FINANCIAL CONTROLS**

2.1 Franchise Fee.

Section 3.1 of the Franchise Agreement is hereby amended as follows:

As compensation for the benefits and privileges granted under this Franchise and in consideration of permission to use Grantor's streets, Grantee shall pay as a Franchise Fee to Grantor an amount equal to the maximum amount permitted under federal law, which is presently five percent (5.0%) of Grantee's Gross Revenues derived from the operation of its Cable System to provide Cable Services in the City. Accrual of such five percent (5.0%) Franchise Fee shall commence sixty (60) days after the Effective Date of this Agreement. (For the first sixty (60) days of this Agreement, Grantee shall continue to pay to Grantor a Franchise Fee equal to 1.5% of Grantee's Gross Revenues derived from the operation of its Cable System to provide Cable Services in the City.)

Initials:

  
GRANTEE

  
GRANTOR

2.2 Payments.

Section 3.2 of the Franchise Agreement is hereby amended as follows:

Grantee's Franchise Fee payments to Grantor shall be computed quarterly. Each quarterly payment shall be due and payable within sixty (60) days from the end of each quarter, as follows:

<u>Quarter Ending on:</u>	<u>Payment Due Date:</u>
March 31 <sup>st</sup>	May 30 <sup>th</sup>
June 30 <sup>th</sup>	August 29 <sup>th</sup>
September 30 <sup>th</sup>	November 29 <sup>th</sup>
December 31 <sup>st</sup>	February 29 <sup>th</sup> /March 1 <sup>st</sup>

**ARTICLE 3. ADMINISTRATION AND REGULATION**

3.1 Franchise Amendment Procedure.

Either party may, at any time, seek an amendment of the Franchise by so notifying the other party in writing. Within thirty (30) days of receipt of notice, Grantor and Grantee shall meet to discuss the proposed amendment(s). If the parties reach a mutual agreement upon the suggested amendment(s), such amendment(s) shall be submitted to the City Council for its approval. If approved by the City Council and Grantee, then such amendment(s) shall be deemed part of the Franchise. If mutual agreement is not reached, there shall be no amendment.

**ARTICLE 4. FINANCIAL AND INSURANCE REQUIREMENTS**

4.1 Insurance.

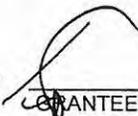
Section 5.2(B) of the Franchise Agreement is hereby amended as follows:

(B) Grantee shall maintain in full force and effect, at its own cost and expense, each of the following policies of insurance:

(1) Commercial General Liability insurance with limits of no less than Five Million Dollars (\$5,000,000.00) per occurrence and Five Million Dollars (\$5,000,000.00) general aggregate from an insurer with a Best's rating of no less than "A-VI." Coverage shall be at least as broad as that provided by ISO CG 00 01 1/96 or its equivalent and include severability of interests. Such insurance shall name Grantor, its officers, agents, and employees as additional insureds in accordance with ISO CG 2026 or its equivalent. There shall be a waiver of subrogation and rights of recovery against Grantor, its officers, agents, and employees. Coverage shall apply as to claims between insureds on the policy, if applicable. Grantee shall be responsible for the payment of all deductibles, and deductibles shall not in any way limit Grantee's liability to Grantor.

(2) Commercial Automobile Liability insurance with minimum combined single limits of One Million Dollars (\$1,000,000.00) each occurrence and Three Million Dollars (\$3,000,000.00) aggregate with respect to each of Grantee's owned, hired, and non-owned vehicles assigned to or used in the operation of the Cable System in the City. The policy shall contain a severability of interests provision.

(3) Employer's Liability: One Million Dollars (\$1,000,000.00).

Initials:  GRANTEE  GRANTOR

**ARTICLE 5. PUBLIC, EDUCATIONAL, AND GOVERNMENTAL ACCESS**

**5.1 Capital Contribution for Public, Educational, and Governmental Access.**

Within sixty (60) days of the Effective Date of this Renewal Agreement, Grantee shall provide a capital contribution of Five Thousand Dollars (\$5,000.00) which Grantor and/or, at Grantor's discretion, its designated access providers may use for capital facilities and equipment supporting all permissible Public, Educational, and Governmental Access programming to the extent carried on Grantee's Cable System within the Franchise Area, including, without limitation, replacement and upgrading of Access equipment and facilities. Grantee may collect the capital contribution from Subscribers as a separate line item on Subscriber bills in accordance with federal law. Following Grantee's provision of the capital contribution, Grantee shall, at Grantor's request, but no more often than on a quarterly basis, notify Grantor of the amount collected from Subscribers during the preceding quarter, and shall notify Grantor when the capital contribution has been recovered.

**5.2 Service to Educational and Governmental Facilities.**

- (A) Service to Educational Facilities. Grantee shall provide free "Basic" Cable Service and free installation at one (1) outlet to each public school and public college located in the Franchise Area within 125 feet of Grantee's distribution cable.
- (B) Service to Governmental Facilities. Grantee shall provide free "Basic" Cable Service and free installation at one (1) outlet to each local governmental building located in the Franchise Area within 125 feet of Grantee's distribution cable. "Local governmental buildings" shall include those buildings owned or leased by the Franchising Authority, those buildings owned or leased within the Franchise area by Las Animas County, and/or those buildings owned or leased by any other local governmental entity for government administrative purposes; but shall not include buildings owned by the Franchising Authority, Las Animas County, and/or another local governmental entity but leased to third parties, or buildings such as storage facilities at which government employees are not regularly stationed, or buildings owned by Las Animas County but located outside of the Franchise Area.

**ARTICLE 6. GENERAL STREET USE AND CONSTRUCTION**

**6.1 Construction.**

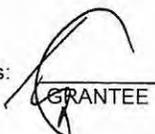
Section 10.1 of the Franchise Agreement is hereby amended by the addition of the following Subsection 10.1(D):

- (D) Whenever possible and reasonably practicable, Grantor shall provide at least three (3) days' notice to Grantee of all opportunities for joint trenching or boring.

**ARTICLE 7. MISCELLANEOUS PROVISIONS**

**7.1 Written Notice.**

All notices, reports, or demands required to be given in writing under this Renewal Agreement shall be deemed to be given when delivered personally to the Person designated below, or when deposited in the United States mail in a sealed envelope, with registered or certified mail, postage prepaid thereon, or when sent by express mail or overnight air courier addressed to the party to which notice is being given, as follows:

Initials:  GRANTEE  GRANTOR

If to Grantor:                      City Manager  
   City of Trinidad, Colorado  
   135 North Animas Street  
   P.O. Box 880  
   Trinidad, CO 81082

If to Grantee:                      Comcast Government Affairs Department  
   8000 East Iliff Avenue  
   Denver, CO 80231

Such addresses may be changed by either party upon written notice to the other party given as provided in this Section.

7.2      Severability.

If any section, subsection, paragraph, term, or provision of this Renewal Agreement is determined to be illegal, invalid, or unconstitutional by any court or agency of competent jurisdiction, such determination shall have no effect on the validity of any other section, subsection, paragraph, term, or provision of this Renewal Agreement, all of which shall remain in full force and effect for the duration of the Renewal Agreement, or any renewal or renewals thereof. In the event of such determination by a court of competent jurisdiction, Grantor and Grantee shall have the option to reopen the affected sections of this Renewal Agreement and those sections directly related to same for negotiations.

7.3      Entire Agreement; Modification and Waiver.

This Renewal Agreement constitutes the entire agreement between the parties pertaining to the subject matter contained herein and supersedes all prior and contemporaneous agreements, representations, and understandings. No supplement, modification, or amendment of this Renewal Agreement shall be binding unless executed in writing by both parties. No waiver of this Renewal Agreement shall be binding unless executed in writing by the party making the waiver.

7.4      Authorization.

The signatories to this Renewal Agreement affirm and warrant that they are fully authorized to enter into and execute this Renewal Agreement, and that all necessary actions, notices, meetings, and/or hearings pursuant to any law required to authorize their execution of this Renewal Agreement have been made.

*[Signatures appear on next page]*

Initials:  GRANTEE       GRANTOR

IN WITNESS WHEREOF, the parties hereto have executed this Renewal Agreement on the date first written above.

GRANTOR: CITY OF TRINIDAD, COLORADO, a municipal corporation of the State of Colorado

By: Joseph A. Reorda  
JOSEPH A. REORDA, Mayor

ATTEST:  
Audra Fatur  
AUDRA FATUR, City Clerk

APPROVED AS TO FORM:  
Jerod Beatty  
JEROD BEATTY, City Attorney

GRANTEE: COMCAST OF COLORADO/PENNSYLVANIA/WEST VIRGINIA, LLC, a limited liability company of the State of Delaware

By: Scott Binder  
SCOTT BINDER, Senior Vice President - Colorado Region  
Timothy T. Nester, VP Finance - West Division

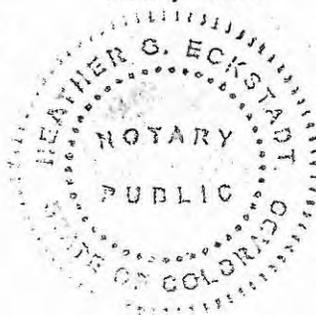
STATE OF Colorado )  
COUNTY OF Arapahoe ) ss.

The foregoing instrument was subscribed and sworn to before me this 1<sup>th</sup> day of April, 2009, in the State of Colorado, County of Arapahoe, by Scott Binder, Senior Vice President - Colorado Region, on behalf of Comcast of Colorado/Pennsylvania/West Virginia, LLC. Timothy T. Nester, VP of Finance - West Division

My commission expires ~~is~~ Commission Expires 04/10/2009

Heather G. Eckstadt  
Notary Public

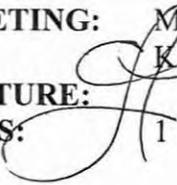
HEATHER G. ECKSTADT  
Notary Public  
State of Colorado





## COUNCIL COMMUNICATION

6

**CITY COUNCIL MEETING:** March 25, 2014  
**PREPARED BY:** Karen Wolf, Assistant Planner  
**DEPT. HEAD SIGNATURE:**   
**# OF ATTACHMENTS:** 1

**SUBJECT:** Trail & Greenway Master Plan Consultant Contract

**PRESENTER:** Louis Fineberg, Planning Director

**RECOMMENDED CITY COUNCIL ACTION:** Approve contract with THK Associates, Inc.

**SUMMARY STATEMENT:** The City received 4 proposals and conducted 4 interviews in order to select a consultant for the Trail & Greenway Master Plan, THK Associates, Inc.

**EXPENDITURE REQUIRED:** \$57,150 Total

**SOURCE OF FUNDS:** Capital Improvements

**POLICY ISSUE:** Selection of contractor/contract approval.

**ALTERNATIVE:** Re-bid project.

### BACKGROUND INFORMATION:

- The team we selected, THK Associates, Inc. provided a vision beyond our expectations, which included—among other goals—a strong educational component, and a breadth of experience that perfectly matched each aspect of the project and beyond, such as experience facilitating relationships with land grant agencies. Please see the Scope of Work provided in the contract for additional information about the project.
- State Trails awarded \$45,000 toward this project, leaving the City with an expenditure of **\$12,150**. The City already provided an in-kind match of \$1,350 through the Planning Department.

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## AGREEMENT FOR [PROFESSIONAL] SERVICES

THIS AGREEMENT FOR [PROFESSIONAL] SERVICES (the "Agreement") is made and entered into effective this \_\_\_\_ day of \_\_\_\_\_, 201\_\_, by and between the CITY OF TRINIDAD, a Colorado home rule municipality whose address is 135 North Animas Street, Trinidad, Colorado (the "City"), and THK Associates, Inc., a market research, landscape architecture, planning and urban design firm whose principal business address is 2953 South Peoria Street, Suite 101, Aurora, CO 80014 ("Contractor").

WHEREAS, the City desires to retain the services of Contractor; and

WHEREAS, Contractor desires to provide services to the City.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the sufficiency of which is hereby acknowledged, the parties agree as follows:

### 1. SERVICES; DELIVERABLES.

a. Services. The City agrees to retain Contractor to provide the services (**Scope of Work**) set forth in **Exhibit A**, which may also include a **project description**, attached hereto and incorporated herein by reference (the "Services"), and Contractor agrees to so serve.

b. Controlling Terms. In the event of any conflict between the terms and conditions contained in this Agreement and those contained in any Exhibit or Attachment hereto, the terms and conditions of this Agreement shall prevail and as such shall supersede the conflicting terms and/or conditions of such Exhibit or Attachment.

c. Deliverables. In the event any deliverables, also set forth in **Exhibit A**, required under this Agreement consist of reports, surveys, maps, plans, drawings or photographs, or any other materials that lend themselves to production in electronic format, as determined by the City, Contractor shall provide such deliverables to the City in both hard copy and one or more electronic formats acceptable to the City, unless otherwise directed by the City in writing, and Contractor's failure to do so shall constitute a material breach of this Agreement. Acceptable electronic formats may include, but are not necessarily limited to, editable Word document, editable PDF document, AutoCAD and specified GPS/GIS format(s). Prior to beginning the Services, Contractor shall consult with the City to determine which electronic formats are acceptable. Any and all deliverables and other tangible materials produced by Contractor pursuant to this Agreement shall at all times be considered the property of the City.

e. Contractor Representations. Contractor warrants and represents that it has the requisite authority, capacity, experience and expertise to perform the Services in compliance with the provisions of this Agreement and all applicable laws and agrees to perform the Services on the terms and conditions set forth herein. The City reserves the right to omit any of the Services identified in Exhibit A upon written notice to Contractor.

### 2. COMPENSATION; PAYMENT.

a. Amount. As compensation for performance of the Services, the City agrees to pay Contractor a sum not to exceed fifty-seven thousand one hundred fifty **Dollars** (**\$ 57,150**); provided, however, that if the actual cost of the Services is less than the foregoing, the City shall compensate Contractor only up to the amount of such actual cost.

b. Changed Conditions. Contractor specifically waives any claim for additional compensation for any changed condition arising out of any one or more of the following, unless such changed condition is caused in whole or in part by acts or omissions within the control of the City or persons acting on behalf thereof:

- i. A physical condition of the site of an unusual nature;
- ii. A condition differing materially from those ordinarily encountered and generally recognized as inherent in work of the character and at the location provided for in the Contract; or
- iii. As a result of any force majeure.

c. Invoices and Payment. The City shall make payment within thirty (30) days after receipt and approval of invoices submitted by Contractor. Invoices shall be submitted to the City not more frequently than monthly and shall identify the specific Services performed for which payment is requested.

d. IRS Form W-9. Contractor shall provide to the City a completed Internal Revenue Service Form W-9 not later than the date upon which Contractor submits its first invoice to the City for payment. Failure to provide a completed Form W-9 may result in delay or cancellation of payment under this Agreement.

3. PERFORMANCE.

a. Prosecution of the Services. Contractor shall, at its own expense, perform all work and furnish all labor, materials, tools, supplies, machinery, utilities and other equipment that may be necessary for the completion of the Services, in a professional and workmanlike manner, except as otherwise provided in Work Orders or attachments thereto.

b. Licenses and Permits.

i. Licenses. Contractor and each subcontractor shall be responsible to obtain all licenses required for the Services, including a City **(or other applicable governmental jurisdictions)** Contractor's license, if required. Contractor shall pay any and all City license fees.

ii. Permits. Contractor shall obtain any and all permits required for the Services. No charge will be made for any City permit required for the Services.

c. Rate of Progress. Contractor acknowledges and understands that it is an essential term of this Agreement that Contractor maintain a rate of progress in the Services that will result in completion of the Services in accordance with this Agreement, and to that end, Contractor agrees to proceed with all due diligence to complete the Services in a timely manner in accordance with this Agreement.

d. Monitoring and Evaluation. The City reserves the right to monitor and evaluate the progress and performance of Contractor to ensure that the terms of this Agreement are being satisfactorily met in accordance with the City's and other applicable monitoring and evaluating criteria and standards. Contractor shall cooperate with the City relating to such monitoring and evaluation.

e. Drugs, Alcohol and Workplace Violence; Compliance with Applicable Law. Contractor and its employees, agents and subcontractors, while performing the Services or while on City property for any reason during the term of this Agreement, shall adhere to the City's policies applicable to City employees regarding drugs, alcohol and workplace violence. A copy of such policies will be made available to Contractor upon request. Contractor further covenants and agrees that in performing the Services hereunder, it shall comply with all applicable federal, state and local laws, ordinances and regulations.

f. Specific Performance. In the event of a breach of this Agreement by Contractor, the City shall have the right, but not the obligation, to obtain specific performance of the Services in addition to any other remedy available under applicable law.

4. TERM AND TERMINATION.

a. Term. The Term of this Agreement shall be from the date first written above until January 30<sup>th</sup>, 2015, upon which date all Services shall be completed to the City's satisfaction unless the Term is unless extended by written agreement of the parties.

b. Termination.

i. Generally. The City may terminate this Agreement without cause if it determines that such termination is in the City's best interest. The City shall effect such termination by giving written notice of termination to Contractor, specifying the effective date of termination, at least fourteen (14) calendar days prior to the effective date of termination. In the event of such termination by the City, the City shall be liable to pay Contractor for Services performed as of the effective date of termination, but shall not be liable to Contractor for anticipated profits. Contractor shall not perform any additional Services following receipt of the notice of termination unless otherwise instructed in writing by the City.

ii. For Cause. If, through any cause, Contractor fails to fulfill its obligations under this Agreement in a timely and proper manner, violates any provision of this Agreement or violates any applicable law, the City shall have the right to terminate this Agreement for cause immediately upon written notice of termination to Contractor. In the event of such termination by the City, the City shall be liable to pay Contractor for Services performed as of the effective date of termination, but shall not be liable to Contractor for anticipated profits. Contractor shall not perform any additional Services following receipt of the notice of termination. Notwithstanding the foregoing, Contractor shall not be relieved of liability to the City for any damages sustained by the City by virtue of any breach of this Agreement, and the City may withhold payment to Contractor for the purposes of setoff until such time as the exact amount of damages due to the City from Contractor is determined.

5. FORCE MAJEURE Neither party shall be liable for failure to perform that party's obligations if such failure is as a result of Acts of God (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, blockage, embargo, labor dispute, strike, lockout or interruption or failure of electricity or telephone service. No party is entitled to terminate this Agreement under Clause 4 (Term and Termination) in such circumstances.

If a party asserts Force Majeure as an excuse for failure to perform the party's obligation, then the nonperforming party must prove that the party took reasonable steps to minimize delay or damages caused by foreseeable events, that the party substantially fulfilled all non-excused obligations, and that the other party was timely notified of the likelihood or actual occurrence of an event described in Clause 5.

6. INDEMNIFICATION. Contractor shall be liable and responsible for any and all damages to persons or property caused by or arising out of the actions, obligations or omissions of Contractor or its employees, agents, representatives or other persons acting under Contractor's direction or control in performing or failing to perform the Services under this Agreement. Contractor shall indemnify and hold harmless the City, its elected and appointed officials and its employees, agents and representatives (the "Indemnified Parties"), from any and all liability, claims, demands, actions, damages, losses, judgments, costs or expenses, including, but not limited to, attorney fees, which may be made or brought or which may result against any of the Indemnified Parties as a result or on account of the negligent, grossly negligent, willful and wanton, or intentional actions or omissions of Contractor and/or its employees, agents or representatives or other persons acting under Contractor's direction or control. The provisions set forth in this Section shall survive the completion of the Services and the satisfaction, expiration or termination of this Agreement.

7. INSURANCE.

a. Commercial General Liability Insurance. Contractor shall procure and keep in force during the duration of this Agreement a policy of comprehensive general liability insurance insuring Contractor, and naming the City as an additional insured, against any liability for personal injury, bodily injury or death arising out of the performance of the Services with at least One Million Dollars (\$1,000,000) each occurrence. The limits of such insurance shall not, however, limit the liability of Contractor hereunder.

b. Products and Completed Operations Insurance. Contractor shall procure and keep in force during the duration of this Agreement a policy of products and completed operations insurance insuring Contractor, and naming the City as an additional insured, against any liability for bodily injury or property damage caused by the completed Services, with a combined single limit of at least One Million Dollars (\$1,000,000). The limits of such insurance shall not, however, limit the liability of Contractor hereunder. **NOT APPLICABLE.**

c. Comprehensive Automobile Liability Insurance. Contractor shall procure and keep in force during the duration of this Agreement a policy of comprehensive automobile liability insurance insuring Contractor, and naming the City as an additional insured, against any liability for personal injury, bodily injury or death arising out of the use of motor vehicles and covering operations on or off the site of all motor vehicles controlled by Contractor that are used in connection with performance of the Services, whether the motor vehicles are owned, non-owned or hired, with a combined single limit of at least One Million Dollars (\$1,000,000). The limits of such insurance shall not, however, limit the liability of Contractor hereunder.

d. Professional Liability Insurance. If Contractor is an architect, engineer, surveyor, appraiser, physician, attorney, accountant or other licensed professional, or if it is customary in the trade or business in which Contractor is engaged to carry professional liability insurance, or if the City otherwise deems it necessary, Contractor shall procure and keep in force during the duration of this Agreement a policy of errors and omissions professional liability insurance insuring Contractor against any professional liability with a limit of at least One Million Dollars (\$1,000,000.00) per

claim and annual aggregate. The limits of such insurance shall not, however, limit the liability of Contractor hereunder.

e. Terms of Insurance.

i. Insurance required by this Section shall be with companies qualified to do business in the State of Colorado and may provide for deductible amounts as Contractor deems reasonable for the Services, but in no event greater than Ten Thousand Dollars (\$10,000.00). Contractor is responsible for payment of any such deductible. No such policies shall be cancelable or subject to reduction in coverage limits or other modification except after thirty (30) days prior written notice to the City. Contractor shall identify whether the type of coverage is "occurrence" or "claims made." If the type of coverage is "claims made," which at renewal Contractor changes to "occurrence," Contractor shall carry a twelve (12) month tail. Contractor shall not do or permit to be done anything that shall invalidate the policies.

ii. No "Pollution Exclusion."

(a) The insurance required by this Section shall cover any and all damages, claims or suits arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants, and shall not exclude from coverage any liability or expense arising out of or related to any form of pollution, whether intentional or otherwise.

(b) In the event Contractor is unable to procure a policy of comprehensive general liability insurance in compliance with the provisions of subsection ii(a) above, Contractor shall secure and maintain either a rider or a separate policy insuring against liability for pollution related damages, claims or suits, as described in subsection ii(a), with at least One Million Dollars (\$1,000,000) each occurrence, subject to approval by the City, which approval shall not be unreasonably withheld.

iii. The insurance policies described in herein shall be for the mutual and joint benefit and protection of Contractor and the City. Except for the professional liability policy, all insurance policies required herein shall provide that the City, although named as an additional insured, shall nevertheless be entitled to recovery under said policies for any loss occasioned to the City or its officers, employees or agents by reason of the negligence of Contractor or its officers, employees, agents, subcontractors or business invitees. Such policies shall be written as primary policies not contributing to and not in excess of coverages the City may carry.

f. Other Insurance. During the term of this Agreement, Contractor shall procure and keep in force workers' compensation insurance and all other insurance required by any applicable law.

g. Evidence of Coverage. Before commencing work under this Agreement, Contractor shall furnish to the City certificates of insurance policies and all necessary endorsements evidencing insurance coverage required by this Agreement. Contractor understands and agrees that the City shall not be obligated under this Agreement until Contractor furnishes such certificates of insurance and endorsements. In the event the Term of this Agreement extends beyond the period of coverage for any insurance required herein, Contractor shall, not less than ten (10) days prior to the expiration of any such insurance coverage, provide the City with new certificates of insurance and endorsements evidencing either new or continuing coverage in accordance with the requirements of this Agreement.

8. SUBCONTRACTS – INSURANCE. Due to the nature of the Services, Contractor hereby agrees that it will not engage subcontractors to perform any part of the Services without the express written consent of the City, which shall not be unreasonably withheld. If such consent is granted, Contractor agrees to include the insurance requirements set forth in this Agreement in all subcontracts. The City shall hold Contractor responsible in the event any subcontractor fails to procure and maintain, for the duration of this Agreement, insurance meeting the requirements set forth herein. The City reserves the right to approve variations in the insurance requirements applicable to subcontractors upon joint written request of subcontractor and Contractor if, in the City's sole discretion, such variations do not substantially affect the City's interests.

9. SALES AND USE TAX. Unless specifically exempt, all materials provided and equipment used in the performance of services within the City are subject to City Sales & Use Tax, including services performed by a contractor on behalf of the City.

a. Contractor Responsible for Tax. Contractor is subject to the tax on all purchases, fabrication, manufacture or other production of tangible personal property used, stored or consumed in performance of the Services.

b. Specific Industry Standard. The Specific Industry Standard for Construction and Contractors (Regulation 20-S.I.15) can be provided upon request by contacting the City's Finance Department, , at 719-846-9843.

c. Equipment. Prior to or on the date Contractor locates equipment within the City to fulfill this Agreement, Contractor shall file a declaration describing each anticipated piece of equipment the purchase price of which was two thousand five hundred dollars (\$2,500) or greater, stating the dates on which Contractor anticipates the equipment to be located within and removed from the boundaries of the City and stating the actual or anticipated purchase price of each such anticipated piece of equipment along with any other information deemed necessary by the City. When such declared equipment is located within the City for a period of thirty (30) days or less, Contractor may include sales and use tax calculated on one-twelfth (1/12) of the purchase price of such equipment in the contract amount, in compliance with Section 20-5-V of the Commerce City Sales & Use Tax Code. If Contractor fails to declare the equipment to the City prior to or on the date Contractor locates the equipment within the City, none of the sales and use tax due on the equipment shall be allowed as a contract expense.

10. UNDOCUMENTED WORKERS – COMPLIANCE WITH C.R.S. § 8-17.5-102.

a. Contractor hereby certifies that, as of the date of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and that Contractor will participate in the E-verify Program or Department Program as defined in C.R.S. § 8-17.5-101 in order to confirm the eligibility of all employees who are newly hired to perform work under this Agreement.

b. Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

c. Contractor is prohibited from using either the E-verify Program or Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

d. If Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, Contractor shall:

i. Notify the subcontractor and the City within three (3) days that Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

ii. Terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required pursuant to this subparagraph d the subcontractor does not stop employing or contracting with the illegal alien; provided, however, that Contractor shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

e. Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment (the "Department") made in the course of an investigation that the Department is undertaking pursuant to the authority established in Article 17.5 of Title 8, C.R.S.

f. If Contractor violates this Section, the City may terminate this Agreement for breach of contract. If this Agreement is so terminated, Contractor shall be liable for actual and consequential damages to the City.

g. Verification of lawful presence; Compliance with C.R.S. § 24-76.5-103.

i. If Contractor is a natural person or a sole proprietor without employees (*i.e.*, not a corporation, limited liability company, partnership or other similar entity) and is 18 years of age or older, he/she must do the following: **NOT APPLICABLE**.

(a) Complete the affidavit attached to this Agreement as **an additional Exhibit**; and

(b) Attach a photocopy of the front and back of one of the valid forms of identification noted on **Exhibit \_**.

ii. If Contractor executes the affidavit stating that he/she is an alien lawfully present in the United States, the City shall verify his/her lawful presence through the federal systematic alien verification or entitlement program, known as the "SAVE Program," operated by the U.S. Department of Homeland Security or a successor program designated by said department. In the event the City determines through such verification process that Contractor is an alien not lawfully present in the United States, the City shall terminate this Agreement and shall have no further obligation to Contractor hereunder.

#### 11. CONTRACTOR'S REMEDIES FOR BREACH.

a. Contractor may terminate this Agreement in the event of non-payment of sums due only as provided in this Section, except where non-payment is the result of Contractor's failure to provide the City with a completed IRS Form W-9 as required herein. In the event Contractor elects to terminate this Agreement for non-payment of sums due, Contractor shall first provide the City notice of Contractor's intent to terminate and allow the City ten (10) days within which to make payment. Contractor's termination shall become effective immediately upon the City's failure to make payment within such ten-day period.

b. Pending resolution of any material breach by the City, Contractor may, in addition to any other remedies provided by law, discontinue performance of the Services without being in breach of this Agreement.

12. NOTICES. Written notices required under this Agreement and all other correspondence between the parties shall be directed to the following and shall be deemed received when hand-delivered or three (3) days after being sent by certified mail, return receipt requested:

If to the City:

Louis Fineberg, Planning Director  
Department of Planning  
135 North Animas Street  
Trinidad, CO 81082

If to Contractor:

Kevin R. Shanks, RLA, Vice President / Director  
of Planning & Landscape Architecture  
THK Associates, Inc.  
2953 South Peoria Street, Suite 101  
Aurora, CO 80014

13. GENERAL PROVISIONS.

a. Independent Contractor; No Partnership or Agency. Notwithstanding any language in this Agreement or any representation or warranty to the contrary, the relationship between Contractor and the City shall be as independent contractors, and neither the City nor Contractor shall be deemed or constitute an employee, servant, agent, partner or joint venturer of the other. Contractor is obligated to pay federal and state income tax on any money earned pursuant to this Agreement, and neither Contractor nor Contractor's employees, agents or representatives are entitled to workers' compensation benefits from the City.

b. No Third-Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement shall be strictly reserved to the parties. It is the express intention of the parties that any person other than the City and Contractor shall be deemed to be only an incidental beneficiary under this Agreement.

c. No Assignment. Contractor shall not assign this Agreement without the City's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

d. No Waiver. The waiver of any breach of a term, provision or requirement of this Agreement shall not be construed as or deemed a waiver of any subsequent breach of such term, provision or requirement or of any other term, provision or requirement of this Agreement.

e. Governing Law and Venue; Recovery of Costs. This Agreement shall be governed by the laws of the State of Colorado. Venue for state court actions shall be in the 3<sup>rd</sup> Judicial District in Las Animas County, Colorado, and venue for federal court actions shall be in the United States District Court for the District of Colorado. In the event legal action is brought to resolve any dispute among the parties related to this Agreement, the prevailing party in such action shall be entitled to recover reasonable court costs and attorney fees from the non-prevailing party.

f. Governmental Immunity. No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections or other provisions of the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, *et seq.*

g. Entire Agreement; Binding Effect. This Agreement contains the entire agreement of the parties relating to the subject matter hereof and, except as provided herein, may not be modified or

amended except by written agreement of the parties. This Agreement shall be binding upon, and shall inure to the benefit of, the parties and their respective heirs, personal representatives, successors and assigns.

h. Time of the Essence. Contractor acknowledges that time is of the essence in the performance of this Agreement. Contractor's failure to complete any of the Services contemplated herein during the Term of this Agreement, or as may be more specifically set forth in an Exhibit hereto, shall be deemed a breach of this Agreement.

i. Authority. The parties represent and warrant that they have taken all actions necessary to legally authorize the undersigned signatories to execute this Agreement on behalf of the parties and to bind the parties to its terms.

j. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all such counterparts taken together shall be deemed to constitute one and the same instrument.

k. Headings. Paragraph headings used in this Agreement are for convenience of reference and shall in no way control or affect the meaning or interpretation of any provision of this Agreement.

l. Severability. In the event a court of competent jurisdiction holds any provision of this Agreement invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this Agreement.

m. Acknowledgement of Open Records Act – Public Document. Contractor hereby acknowledges that the City is a public entity subject to the Colorado Open Records Act, C.R.S. § 24-72-201, *et seq.*, and as such, this Agreement may be subject to public disclosure thereunder.

14. ADDITIONAL GENERAL PROVISIONS. Please attach (or insert below, 14. a., etc.) any additional provisions, specific to the project named above, Consultant background(s), requirements of the granting agency if applicable, or any other provisions requested by the Contractor.

**[Remainder of this page intentionally left blank – signature page(s) follow]**



**EXHIBIT A – SERVICES (Scope of Work & Deliverables)**

**Exhibit A: Project Scope and Deliverables by Task**

**Task 1: Project Start/Kickoff (\$3,770)**

Prior to commencing work, key consultant personnel will meet with appropriate staff from the City of Trinidad to review, in detail, specific project objectives, schedules, methodologies and other project parameters. This initial meeting is recommended to ensure that all interests are adequately addressed and that the capabilities and knowledge of the consultants and City staff are utilized to the best advantage in completing the project in the most efficient and cost effective manner. This meeting also allows the consultant team to gather knowledge from the City that has been working towards the completion of this project. This meeting will take place via teleconference to maximize the budget. Specific discussion items might include, but are not limited to:

- Identify and introduce project personnel
- Compile City staff knowledge and work to the consultant team
- Review responsibilities of the consultant team and supporting roles of the City of Trinidad staff
- Discuss detailed project goals and objectives
- Review project parameters and schedules and make any necessary project management adjustments
- Ascertain the availability of existing mapping, aerial photography, plans, reports, planning studies and other resources and documents pertinent to the project
- Review details regarding mapped (CAD format) deliverables to ensure compatibility with the City's current mapping
- Formulate a plan for obtaining private landowners' permission to access private properties, where required (it is presumed that some City assistance may be necessary)
- Identify the target dates for the various meetings associated with the project

**Deliverables:**

- *A defined project work schedule and timeline*

- *A defined list of project goals and objectives*
- *Meeting and presentation schedule*
- *Meeting minutes*

## **Task 2: Review and Compile Existing Surveys and Data (\$16,260)**

As many of the potential trails have already been identified for this project, properly compiling existing survey and parcel information is critical. Clark Surveying will collect and compile all surveying and mapping data available from the City and County and digitize all files into useable design program format as described below:

**Ownership Base Mapping** – Clark will prepare an Ownership Base Map of the project area. The map will depict the existing parcels per the current records of the Las Animas County Assessor. The map will include existing parcel boundaries, including annotation referring to ownership information. Annotation will include parcel numbers and owner names. To complete this, Clark will utilize the following steps:

- **Obtain Parcel Maps** – Clark will purchase hard copies of the parcel maps that affect the area of the project. These maps will be purchased from the Las Animas County Assessor.
- **Geo-Referencing** – In order to place the final Base Map on a known coordinate system, Clark will perform a field survey to locate approximately 12 points to be used for Geo-Referencing. Clark will incorporate the results of this survey with the existing survey control network for the City of Trinidad, done by Surveying Control, Inc. in April of 1991. The control network will be established on NAD83, Colorado State Plane, South Zone coordinates horizontally, and NAVD88 vertically.
- **Scan Parcel Maps** – Clark will scan the parcel maps obtained from the Las Animas County Assessor. These files will be in pdf format.
- **Digitize Parcel Lines** – Utilizing the scanned parcel maps Clark will digitize the parcel lines on the scanned parcel maps.
- **Parcel Labels / GIS Database** – Once the parcel lines are digitized, the parcel numbers will be labeled utilizing GIS Smart Tags in Carlson Survey. The labels will appear as MText, however the parcels will be polylines, linked to GIS data. The GIS database will be a Microsoft Access “mdb” file, with several attribute fields for each parcel. These

attribute fields will be able to be added to and edited in the future, should the data need to be incorporated into a GIS program.

*Please note: it is not the intent of this scope to build a fully functional GIS database, but to have the foundation of a GIS database in place, should one be needed in the future. The database will contain at a minimum, the Tax ID numbers for each parcel. If additional information is required, additional fees may apply.*

During this task, the consultant team will also begin compiling the excel/access Implementation Database that can be used to identify which properties will be affected by implementing a particular project. From this point forward in the project, this database will be continually updated to reflect the changes resulting from each task.

#### Deliverables:

- *Compiled ownership base map showing existing parcel data*

*Exclusions* : The map will have "mapping" accuracy only. This scope of services does not include any boundary survey services to alleviate any discrepancies, inaccuracies, overlaps or gaps found in the current assessor records. This scope of services specifically excludes:

- *Boundary Surveys*
- *ALTA/ACSM Surveys*
- *Legal Descriptions*
- *Construction Staking*
- *Title Commitments*
- *Additional Research for Easements or Rights of Way*
- *Control Point Coordinates; a coordinate file in the form of .csv will be provided. This file will contain the survey control point values of the points used to geo-reference the project*
- *Parcel Map pdf's; the parcel maps used for digitizing will be provided*

### **Task 3: Site Tour and Inventory (\$4,960 + \$365 expenses)**

With the base map of existing data created, the next step is for the THK consultant team to familiarize themselves with the parcels identified as new potential City imposed trails and greenways, and identify any additional opportunities, including prioritization of open space areas. Although the City has already completed a great deal of work to establish potential trails, greenways, viewpoints, and trailheads, the overall project could greatly benefit from having the consultant team take a fresh look and try to identify any overlooked opportunities. These could vary from desirable land acquisition opportunities, to potential outdoor

recreation locations, to connections to local and regional trail systems or City and County Destinations.

Having the opportunity to experience the project area firsthand also gives the consultant team the benefit of understanding the context of the trails and how they can affect their surroundings.

*Deliverables:*

- *Opportunities and constraints map identifying any potential projects not previously recorded by the City*
- *Site analysis diagram showing field observations, which may include such items as wildlife corridors, native and invasive plants, and maintenance concerns.*

**Task 4: Survey any Missing Parcel Data (\$5,070)**

After City review of the opportunities and constraints map, the City and the THK consultant team should have a clear understanding of where the potential trails and greenways are located. With this information, the consultant team can gather any missing parcel information, and conduct additional research if necessary. Clark Surveying will revise the Ownership Base Map of the project area. The THK team will incorporate the Trails and Greenways identified in meetings and during the site tour/inventory.

*Deliverables:*

- *Updated ownership base map, complete with any previously missing data and any additional project opportunities as identified in Task 3*
- *Preliminary Master Plan*

**Task 5: Research and Identify Potential Funding Opportunities (\$3,960)**

By this point in the project, the consultant team will have a good framework of the trails and greenways master plan, and will be able to research and identify potential funding opportunities for specific projects. These sources can range from grants, to outdoors programs, to community service opportunities. It is important to link these opportunities to specific projects within the master plan because it facilitates the implementation of those projects. It will also play a major role in how the stakeholder meetings (in Task 6) are

structured, as well as influencing the prioritization recommendations of projects in the final master plan.

*Deliverables:*

- *Summary of potential funding opportunities linked to specific project opportunities*

**Task 6: Stakeholder Meeting and Public Engagement (\$6,120 + \$365 expenses)**

The THK consultant team feels that an appropriate amount of stakeholder and public community participation will help build a working consensus during the development of the trails and greenways master plan. Our experience in the past has taught us that keeping the community informed and allowing them to be part of the planning process improves support and consensus. Consensus is important because it will naturally lead to ownership and hence, implementation.

The THK consultant team proposes addressing public engagement on two fronts, the community at large and stakeholders. The purpose of engaging the community at large in the planning is to garner public support of the plan, and subsequent support for implementation of the individual projects. The THK consultant team will engage the community by inviting the general public to two (2) workshops where the goal is to gather input to help shape the plan. Although many of the objectives of the plan have already been established by this point, these workshops allow citizens to add their input and gives them a feeling of ownership in the project.

To engage stakeholders, the consultant team will hold two meetings in which only stakeholders are invited. If key stakeholders are identified for specific projects, the consultant team may meet with them individually. All of these meetings would be to disseminate and gather information regarding the project including the following:

1. Introduce the planning team
2. Introduce the project
3. Present the base map showing potential project locations
4. Present the existing conditions information and identify any inaccuracies
5. Project schedule

6. Gather stakeholder input and discuss land acquisition and/or easement possibilities
7. Meet the stakeholders

The consultant team will also reach out to local schools and businesses to gain their input and support in the plan. Trinidad's rich Native American, explorer, pioneer and cowboy histories are unique, colorful and perfectly aligned to inspire the creation of classroom learning programs. When the majesty and appeal of Trinidad's natural environment is also better understood and appreciated, it is the perfect combination to bring together city-wide unity, support and pride in Trinidad's Trail and Greenway System. Naturally, this can produce unique resources for eye-catching stories and promotions for Trinidad within the media and tourist industries.

As with other communities, Trinidad could, with the experience and expertise of THK professionals, engage a diverse array of stakeholders. From past experience, the THK consultant team has found a high interest in participation from classroom teachers, students, parents, businesses and banks, nonprofit organizations, elected officials and the media. They all wanted to contribute and participate in a public process of creating a fun, cooperative, interactive and easy-to-use classroom experience. This program would help students explore the natural sciences, art and cultural histories underlying the paths in the recreational trail network of Trinidad.

A Trinidad Trail and Greenway System classroom program can include multiple modes of learning techniques including logic, imagination, art, science, math and cooperative social skills unraveling the mysteries of the natural environment. Projects involving creating classroom dioramas should be considered with the students' finished projects put on public display around the city and covered by the media.

*Deliverables:*

- *Summary of public engagement workshops*
- *Meeting minutes from stakeholder meeting(s)*
- *Potential Classroom Program*

**Task 7: Refine Master Plan and Database (\$5,670)**

Following the public workshops and stakeholder meetings, the THK consultant team will refine both the master plan and the Implementation Database to reflect all of the changes to this point. The THK consultant team will also develop any additional supporting documents

that should be included in the master plan document, such as support information from stakeholders or educational programming information. We will then ask the City to review these documents for final comment.

*Deliverables:*

- *Draft master plan document*
- *Draft Implementation Database. Database fields can include, but are not limited to:*
  - *Parcel geographic and ownership data*
  - *Easement data*
  - *Acquisition history/notes*
  - *Land use data*
  - *Relationships to existing and current trails*
  - *Potential funding opportunities*
  - *Relationship/proximity to viewpoints, rivers, existing trailheads, etc. which will influence open space area prioritization.*
  - *Maintenance concerns*
  - *Wildlife corridors/habitats*

**Task 8: Finalize and Deliver Master Plan and Database (\$6,250)**

The THK consultant team will revise the master plan and Implementation Database based on the City comments. Final delivery of these documents will mark the conclusion of this project, but will also lay the path for the implementation of the individual projects within the plan.

*Deliverables:*

- *Final master plan document*
- *Final Implementation Database*

**Task 9: Initiating the Early Action Project (\$4,360)**

In the past, Kevin Shanks, Principle In Charge and Project Manager with THK, has been very instrumental in developing partnerships and obtaining funding for open space, trail, park and

greenway projects. Potential funding partners for the implementation of the City of Trinidad Trail and Greenway Master Plan will be identified and contacted by the THK consultant team with information about the proposed plan. Potential partnership discussions will be initiated. These partners include DOLA, Colorado Department of Wildlife, U.S. Fish and Wildlife Service, Colorado Department of Health (funding programs that reduce obesity), Colorado Tourism Board, Colorado State Parks, Private Land Owners, Developers, Land Trusts, Utility Providers, Councils of Government, recreational organizations including local organizations such as park and recreation districts, school districts, economic development organizations, businesses, history museums, etc.

*Deliverables:*

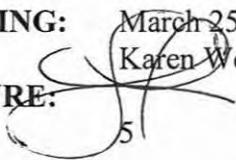
- *Early Action Project Partnership*

**Fees by Task:**

<i>Task 1</i> .....	<i>\$3,770</i>
<i>Task 2</i> .....	<i>\$16,260</i>
<i>Task 3</i> .....	<i>\$5,325</i>
<i>Task 4</i> .....	<i>\$5,070</i>
<i>Task 5</i> .....	<i>\$3,960</i>
<i>Task 6</i> .....	<i>\$6,485</i>
<i>Task 7</i> .....	<i>\$5,670</i>
<i>Task 8</i> .....	<i>\$6,250</i>
<i>Task 9</i> .....	<i>\$4,360</i>
<b><i>Total</i></b> .....	<b><i>\$57,150</i></b>



## COUNCIL COMMUNICATION

**CITY COUNCIL MEETING:** March 25, 2014  
**PREPARED BY:** Katen Wolf, Assistant Planner  
**DEPT. HEAD SIGNATURE:**   
**# OF ATTACHMENTS:** 5

**SUBJECT:** DOLA Commercial Street Phase II Contract

**PRESENTER:** Louis Fineberg, Planning Director

**RECOMMENDED CITY COUNCIL ACTION:** Approve contract with Department of Local Affairs (DOLA).

**SUMMARY STATEMENT:** The City received a State of Colorado Energy and Mineral Impact Assistance grant in the amount of **\$970,000** to repair Commercial Street from Plum Street to Main Street.

**EXPENDITURE REQUIRED:** **\$250,222** Cash  
**\$150,000** In-Kind

**SOURCE OF FUNDS:** Capital Improvement Fund & Utility Fund

**POLICY ISSUE:** Contract Approval

**ALTERNATIVE:** NA

### BACKGROUND INFORMATION:

- The Commercial Street Phase II project involves the renovation of the brick streets from Plum Street to Main Street. This phase is a continuation of Phase I which extends from the Commercial Street Bridge to Plum Street.
- Improvements to Commercial Street include upgrades to utility lines, brick sub-surfaces, brick pavers, intersections and curbs.
- Project total: **\$1,370,222**

### ATTACHMENTS:

1. Grant Agreement (20 pages)
2. Exhibit A – Applicable Laws (1 page)
3. Exhibit B – Scope of Project (5 pages)
4. Exhibit E – Project Performance Plan (3 pages)
5. Exhibit G – Form of Option Letter (1 page)

**GRANT AGREEMENT**

**Between**

**STATE OF COLORADO  
DEPARTMENT OF LOCAL AFFAIRS**

**And**

**CITY OF TRINIDAD**

**Summary**

Award Amount: \$970,000.00

**Identification #s:**

Encumbrance #: F14S7332 (*DOLA's primary identification #*)  
Contract Management System #: 65873 (*State of Colorado's tracking #*)

**Project Information:**

Project/Award Number: EIAF 7332  
Project Name: Trinidad Downtown Improvements: Commercial Street Phase II  
Performance Period: Start Date: \_\_\_\_\_ End Date: 11/30/15  
Brief Description of Project / Assistance: The Project consists of restoration of two blocks of Commercial Street, including an intersection, in the City of Trinidad's historic downtown area. This Phase II completes the entire brick street restoration of Commercial Street (begun in EIAF 7136).

**Program & Funding Information:**

Program Name: Energy & Mineral Impact Assistance Fund  
Funding source: State Funds  
Catalog of Federal Domestic Assistance (CFDA) Number (if federal funds): N/A  
Funding Account Codes: 152 FBA0 127 5110

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**1. PARTIES**

This Agreement (hereinafter called “Grant”) is entered into by and between the **CITY OF TRINIDAD** (hereinafter called “Grantee”), and the STATE OF COLORADO acting by and through the Department of Local Affairs for the benefit of the Division of Local Government (hereinafter called the “State” or “DOLA”).

**2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY.**

This Grant shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or designee (hereinafter called the “Effective Date”). The State shall not be liable to pay or reimburse Grantee for any performance hereunder, including, but not limited to costs or expenses incurred, or be bound by any provision hereof prior to *(see checked option(s) below)*:

- A.  The Effective Date.
- B.  The Effective Date; provided, however, that all Project costs, if specifically authorized by the federal funding authority, incurred on or after March 1, 20XX, may be submitted for reimbursement as if incurred after the Effective Date.
- C.  insert date for authorized Pre-agreement Costs (as such term is defined in §4) , if specifically authorized by the funding authority . Such costs may be submitted for reimbursement as if incurred after the Effective Date.

### 3. RECITALS

#### A. Authority, Appropriation, and Approval

Authority to enter into this Grant exists in C.R.S. 24-32-106 and 29-3.5-101 and funds have been budgeted, appropriated and otherwise made available pursuant to C.R.S. 39-29-110 (Local Government Severance Tax Fund) and a sufficient unencumbered balance thereof remains available for payment. Required approvals, clearance and coordination have been accomplished from and with appropriate agencies.

#### B. Consideration

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Grant.

#### C. Purpose

The purpose of this Grant is described in **Exhibit B**.

#### D. References

All references in this Grant to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

### 4. DEFINITIONS

The following terms as used herein shall be construed and interpreted as follows:

#### A. Budget

“Budget” means the budget for the Project and/or Work described in **Exhibit B**.

#### B. Closeout Certification

“Closeout Certification” means the Grantee’s certification of completion of Work submitted on a form provided by the State.

#### C. Evaluation

“Evaluation” means the process of examining Grantee’s Work and rating it based on criteria established in **§6** and **Exhibit B**.

#### D. Exhibits and other Attachments

The following are attached hereto and incorporated by reference herein:

- i. Exhibit A (Applicable Laws)
- ii. Exhibit B (Scope of Project)
- iii. Exhibit E (Project Performance Plan)
- iv. Exhibit G (Form of Option Letter)

#### E. Goods

“Goods” means tangible material acquired, produced, or delivered by Grantee either separately or in conjunction with the Services Grantee renders hereunder.

#### F. Grant

“Grant” means this agreement, its terms and conditions, attached exhibits, documents incorporated by reference pursuant to the terms of this Grant, and any future modifying agreements, exhibits, attachments or references incorporated herein pursuant to Colorado State law, Fiscal Rules, and State Controller Policies.

#### G. Grant Funds

“Grant Funds” means available funds payable by the State to Grantee pursuant to this Grant.

#### H. Party or Parties

“Party” means the State or Grantee and “Parties” means both the State and Grantee.

#### I. Pay Request(s)

“Pay Request(s)” means the Grantee’s reimbursement request(s) submitted on form(s) provided by the State.

#### J. Pre-agreement costs

“Pre-agreement costs,” when applicable, means the costs incurred on or after the date as specified in **§2** above, and prior to the Effective Date of this Grant. Such costs shall have been detailed in Grantee’s grant application and specifically authorized by the State and incorporated herein pursuant to **Exhibit B**.

**K. Project**

“Project” means the overall project described in **Exhibit B**, which includes the Work.

**L. Project Closeout**

“Project Closeout” means the submission by the Grantee to the State of an actual final Pay Request, a final Status Report and a Closeout Certification.

**M. Program**

“Program” means the grant program specified on the first page of this Grant that provides the funding for this Grant.

**N. Review**

“Review” means examining Grantee’s Work to ensure that it is adequate, accurate, correct and in accordance with the criteria established in **§6** and **Exhibit B**.

**O. Services**

“Services” means the required services to be performed by Grantee pursuant to this Grant.

**P. Status Report(s)**

“Status Report(s)” means the Grantee’s status report(s) on the Work/Project submitted on form(s) provided by the State.

**Q. Subcontractor**

“Subcontractor” means third-parties, if any, engaged by Grantee to carry out specific vendor related services.

**R. Subgrantee**

“Subgrantee” means third-parties, if any, engaged by Grantee to aid in performance of its obligations. Subgrantee is bound by the same overall programmatic and grant requirements as Grantee.

**S. Subject Property**

“Subject Property” means the real property, if any, for which Grant Funds are used to acquire, construct, or rehabilitate.

**T. Substantial Progress in the Work**

“Substantial Progress in the Work” means Grantee meets all deliverables and performance measures within the time frames specified in **Exhibit E**.

**U. Work**

“Work” means the tasks and activities Grantee is required to perform to fulfill its obligations under this Grant and **Exhibit B**, including the performance of the Services and delivery of the Goods.

**V. Work Product**

“Work Product” means the tangible or intangible results of Grantee’s Work, including, but not limited to, software, research, reports, studies, data, photographs, negatives or other finished or unfinished documents, drawings, models, surveys, maps, materials, or work product of any type, including drafts.

**5. TERM**

**A. Initial Term-Work Commencement**

Unless otherwise permitted in **§2** above, the Parties’ respective performances under this Grant shall commence on the Effective Date. This Grant shall terminate on **November 30, 2015** unless sooner terminated or further extended as specified elsewhere herein.

**B. Two Month Extension**

The State, at its sole discretion upon written notice to Grantee as provided in **§16**, may unilaterally extend the term of this Grant for a period not to exceed two months if the Parties are negotiating a replacement Grant (and not merely seeking a term extension) at or near the end of any initial term or any extension thereof. The provisions of this Grant in effect when such notice is given, including, but not limited to prices, rates, and delivery requirements, shall remain in effect during the two month extension. The two-month extension shall immediately terminate when and if a replacement Grant is approved and signed by the Colorado State Controller.

## 6. STATEMENT OF WORK

### A. Completion

Grantee shall complete the Work and its other obligations as described herein and in **Exhibit B**. Except as specified in §2 above, the State shall not be liable to compensate Grantee for any Work performed prior to the Effective Date or after the termination of this Grant.

### B. Goods and Services

Grantee shall procure Goods and Services necessary to complete the Work. Such procurement shall be accomplished using the Grant Funds and shall not increase the maximum amount payable hereunder by the State.

### C. Employees

All persons employed by Grantee or Subgrantees shall be considered Grantee's or Subgrantees' employee(s) for all purposes hereunder and shall not be employees of the State for any purpose as a result of this Grant.

## 7. PAYMENTS TO GRANTEE

The State shall, in accordance with the provisions of this §7, pay Grantee in the following amounts and using the methods set forth below:

### A. Maximum Amount

The maximum amount payable under this Grant to Grantee by the State is **\$970,000.00 (NINE HUNDRED SEVENTY THOUSAND and XX/100 DOLLARS)**, as determined by the State from available funds.

Grantee agrees to provide any additional funds required for the successful completion of the Work.

Payments to Grantee are limited to the unpaid obligated balance of the Grant as set forth in **Exhibit B**.

### B. Payment

#### i. Advance, Interim and Final Payments

Any advance payment allowed under this Grant or in **Exhibit B** shall comply with State Fiscal Rules and be made in accordance with the provisions of this Grant or such Exhibit. Grantee shall initiate any payment requests by submitting invoices to the State in the form and manner set forth and approved by the State.

#### ii. Interest

The State shall not pay interest on Grantee invoices. The State shall fully pay each invoice within 45 days of receipt thereof if the amount invoiced represents performance by Grantee previously accepted by the State.

#### iii. Available Funds-Contingency-Termination

The State is prohibited by law from making fiscal commitments beyond the term of the State's current fiscal year. Therefore, Grantee's compensation is contingent upon the continuing availability of State appropriations as provided in the Colorado Special Provisions, set forth below. If federal funds are used with this Grant in whole or in part, the State's performance hereunder is contingent upon the continuing availability of such funds. Payments pursuant to this Grant shall be made only from available funds encumbered for this Grant and the State's liability for such payments shall be limited to the amount remaining of such encumbered funds. If State or federal funds are not fully appropriated, or otherwise become unavailable for this Grant, the State may immediately terminate this Grant in whole or in part to the extent of funding reduction without further liability in accordance with the provisions herein.

#### iv. Erroneous Payments

At the State's sole discretion, payments made to Grantee in error for any reason, including, but not limited to overpayments or improper payments, and unexpended or excess funds received by Grantee, may be recovered from Grantee by deduction from subsequent payments under this Grant or other grants or agreements between the State and Grantee or by other appropriate methods and collected as a debt due to the State. Such funds shall not be paid to any person or entity other than the State.

### C. Use of Funds

Grant Funds shall be used only for eligible costs identified herein and/or in **Exhibit B**.

**i. Budget Line Item Adjustments.**

Modifications to uses of such Grant Funds shall be made in accordance with §4.4 of Exhibit B. For line item adjustments over 10% but less than 24.99% (a "Minor Line Item Adjustment") which are approved, the State shall provide written notice to Grantee in a form substantially equivalent to Exhibit G (each an "Option Letter"). If exercised, the provisions of the Option Letter shall become part of and be incorporated into this Grant.

**ii. Overall Budget Adjustments.**

Modifications to the overall Budget shall be made in accordance with §4.5 of Exhibit B. For overall Budget adjustments less than 24.99% (a "Minor Budget Adjustment") which are approved, the State shall provide written notice to Grantee in an Option Letter. If exercised, the provisions of the Option Letter shall become part of and be incorporated into this Grant.

**iii. Setting Final Initial Budget.**

All requests by the Grantee to align the initial overall Budget with current market conditions shall be made in accordance with §4.5.1.1 of Exhibit B. If such True-up Budget Proposal (as such term is defined in §4.5.1.1 of Exhibit B) is approved, the State shall provide written notice to Grantee in an Option Letter. If exercised, the provisions of the Option Letter shall become part of and be incorporated into this Grant.

**D. Matching/Leveraged Funds**

Grantee shall provide matching and/or leveraged funds in accordance with Exhibit B.

**8. REPORTING - NOTIFICATION**

Reports, Evaluations, and Reviews required under this §8 shall be in accordance with the procedures of and in such form as prescribed by the State and in accordance with §19, if applicable.

**A. Performance, Progress, Personnel, and Funds**

State shall submit a report to the Grantee upon expiration or sooner termination of this Grant, containing an Evaluation and Review of Grantee's performance and the final status of Grantee's obligations hereunder. In addition, Grantee shall comply with all reporting requirements, if any, set forth in Exhibit B.

**B. Litigation Reporting**

Within 10 days after being served with any pleading in a legal action filed with a court or administrative agency, related to this Grant or which may affect Grantee's ability to perform its obligations hereunder, Grantee shall notify the State of such action and deliver copies of such pleadings to the State's principal representative as identified herein. If the State's principal representative is not then serving, such notice and copies shall be delivered to the Executive Director of DOLA.

**C. Performance Outside the State of Colorado and/or the United States**

*[Not applicable if Grant Funds include any federal funds]* Following the Effective Date, Grantee shall provide written notice to the State, in accordance with §16 (Notices and Representatives), within 20 days of the earlier to occur of Grantee's decision to perform, or its execution of an agreement with a Subgrantee to perform, Services outside the State of Colorado and/or the United States. Such notice shall specify the type of Services to be performed outside the State of Colorado and/or the United States and the reason why it is necessary or advantageous to perform such Services at such location or locations. All notices received by the State pursuant to this §8.C shall be posted on the Colorado Department of Personnel & Administration's website. Knowing failure by Grantee to provide notice to the State under this §8.C shall constitute a material breach of this Grant.

**D. Noncompliance**

Grantee's failure to provide reports and notify the State in a timely manner in accordance with this §8 may result in the delay of payment of funds and/or termination as provided under this Grant.

**E. Subgrants/Subcontracts**

Copies of any and all subgrants and subcontracts entered into by Grantee to perform its obligations hereunder shall be submitted to the State or its principal representative upon request by the State. Any and all subgrants and subcontracts entered into by Grantee related to its performance hereunder shall comply with all applicable federal and state laws and shall provide that such subgrants be governed by the laws of the State of Colorado.

## 9. GRANTEE RECORDS

Grantee shall make, keep, maintain and allow inspection and monitoring of the following records:

### A. Maintenance

Grantee shall make, keep, maintain, and allow inspection and monitoring by the State of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Work or the delivery of Services (including, but not limited to the operation of programs) or Goods hereunder. Grantee shall maintain such records (the "Record Retention Period") until the last to occur of the following:

- (i) a period of five years after the date this Grant is completed or terminated, or final payment is made hereunder, whichever is later, or
- (ii) for such further period as may be necessary to resolve any pending matters, or
- (iii) if an audit is occurring, or Grantee has received notice that an audit is pending, then until such audit has been completed and its findings have been resolved.

### B. Inspection

Grantee shall permit the State, the federal government (if Grant Funds include federal funds) and any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and/or transcribe Grantee's records related to this Grant during the Record Retention Period for a period of five years following termination of this Grant or final payment hereunder, whichever is later, to assure compliance with the terms hereof or to evaluate Grantee's performance hereunder. The State reserves the right to inspect the Work at all reasonable times and places during the term of this Grant, including any extension. If the Work fails to conform to the requirements of this Grant, the State may require Grantee promptly to bring the Work into conformity with Grant requirements, at Grantee's sole expense. If the Work cannot be brought into conformance by re-performance or other corrective measures, the State may require Grantee to take necessary action to ensure that future performance conforms to Grant requirements and exercise the remedies available under this Grant, at law or in equity in lieu of or in conjunction with such corrective measures.

### C. Monitoring

Grantee shall permit the State, the federal government (if Grant Funds include federal funds), and other governmental agencies having jurisdiction, in their sole discretion, to monitor all activities conducted by Grantee pursuant to the terms of this Grant using any reasonable procedure, including, but not limited to: internal evaluation procedures, examination of program data, special analyses, on-site checking, formal audit examinations, or any other procedures. All monitoring controlled by the State shall be performed in a manner that shall not unduly interfere with Grantee's performance hereunder.

### D. Final Audit Report

Grantee shall provide a copy of its audit report(s) to DOLA as specified in **Exhibit B**.

## 10. CONFIDENTIAL INFORMATION-STATE RECORDS

Grantee shall comply with the provisions of this **§10** if it becomes privy to confidential information in connection with its performance hereunder. Confidential information, includes, but is not necessarily limited to, state records, personnel records, and information concerning individuals.

### A. Confidentiality

Grantee shall keep all State records and information confidential at all times and comply with all laws and regulations concerning confidentiality of information. Any request or demand by a third party for State records and information in the possession of Grantee shall be immediately forwarded to the State's principal representative.

### B. Notification

Grantee shall notify its agent, employees, Subgrantees, and assigns who may come into contact with State records and confidential information that each is subject to the confidentiality requirements set forth herein, and shall provide each with a written explanation of such requirements before they are permitted to access such records and information.

**C. Use, Security, and Retention**

Confidential information of any kind shall not be distributed or sold to any third party or used by Grantee or its agents in any way, except as authorized by this Grant or approved in writing by the State. Grantee shall provide and maintain a secure environment that ensures confidentiality of all State records and other confidential information wherever located. Confidential information shall not be retained in any files or otherwise by Grantee or its agents, except as permitted in this Grant or approved in writing by the State.

**D. Disclosure-Liability**

Disclosure of State records or other confidential information by Grantee for any reason may be cause for legal action by third parties against Grantee, the State or their respective agents. Grantee shall, to the extent permitted by law, indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Grantee, or its employees, agents, Subgrantees, or assignees pursuant to this §10.

**11. CONFLICTS OF INTEREST**

Grantee shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the full performance of Grantee's obligations hereunder. Grantee acknowledges that with respect to this Grant, even the appearance of a conflict of interest is harmful to the State's interests. Absent the State's prior written approval, Grantee shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Grantee's obligations to the State hereunder. If a conflict or appearance exists, or if Grantee is uncertain whether a conflict or the appearance of a conflict of interest exists, Grantee shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the apparent conflict constitutes a breach of this Grant.

**12. REPRESENTATIONS AND WARRANTIES**

Grantee makes the following specific representations and warranties, each of which was relied on by the State in entering into this Grant.

**A. Standard and Manner of Performance**

Grantee shall perform its obligations hereunder in accordance with the highest standards of care, skill and diligence in the industry, trades or profession and in the sequence and manner set forth in this Grant.

**B. Legal Authority – Grantee and Grantee's Signatory**

Grantee warrants that it possesses the legal authority to enter into this Grant and that it has taken all actions required by its procedures, by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Grant, or any part thereof, and to bind Grantee to its terms. If requested by the State, Grantee shall provide the State with proof of Grantee's authority to enter into this Grant within 15 days of receiving such request.

**C. Licenses, Permits, Etc.**

Grantee represents and warrants that as of the Effective Date it has, and that at all times during the term hereof it shall have, at its sole expense, all licenses, certifications, approvals, insurance, permits, and other authorization required by law to perform its obligations hereunder. Grantee warrants that it shall maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform this Grant, without reimbursement by the State or other adjustment in Grant Funds. Additionally, all employees and agents of Grantee performing Services under this Grant shall hold all required licenses or certifications, if any, to perform their responsibilities. Grantee, if a foreign corporation or other foreign entity transacting business in the State of Colorado, further warrants that it currently has obtained and shall maintain any applicable certificate of authority to transact business in the State of Colorado and has designated a registered agent in Colorado to accept service of process. Any revocation, withdrawal or non-renewal of licenses, certifications, approvals, insurance, permits or any such similar requirements necessary for Grantee to properly perform the terms of this Grant shall be deemed to be a material breach by Grantee and constitute grounds for termination of this Grant.

### 13. INSURANCE

Grantee and its Subgrantees shall obtain and maintain insurance as specified in this section at all times during the term of this Grant: All policies evidencing the insurance coverage required hereunder shall be issued by insurance companies satisfactory to Grantee and the State.

#### A. Grantee

##### i. Public Entities

If Grantee is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., as amended (the "GIA"), then Grantee shall maintain at all times during the term of this Grant such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. Grantee shall show proof of such insurance satisfactory to the State, if requested by the State. Grantee shall require each subgrant with Subgrantees that are public entities, providing Goods or Services hereunder, to include the insurance requirements necessary to meet Subgrantee's liabilities under the GIA.

##### ii. Non-Public Entities

If Grantee is not a "public entity" within the meaning of the GIA, Grantee shall obtain and maintain during the term of this Grant insurance coverage and policies meeting the same requirements set forth in §13(B) with respect to Subgrantees that are not "public entities".

#### B. Grantees, Subgrantees and Subcontractors

Grantee shall require each subgrant with Subgrantees and each contract with Subcontractors, other than those that are public entities, providing Goods or Services in connection with this Grant, to include insurance requirements substantially similar to the following:

##### i. Workers' Compensation

Workers' Compensation Insurance as required by State statute, and Employer's Liability Insurance covering all of Grantee, Subgrantee and Subcontractor employees acting within the course and scope of their employment.

##### ii. General Liability

Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows: (a) \$1,000,000 each occurrence; (b) \$1,000,000 general aggregate; (c) \$1,000,000 products and completed operations aggregate; and (d) \$50,000 any one fire.

##### iii. Automobile Liability

Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.

##### iv. Malpractice/Professional Liability Insurance

This section  shall |  shall not apply to this Grant.

Grantee, Subgrantees and Subcontractors shall maintain in full force and effect a Professional Liability Insurance Policy in the minimum amount of \$1,000,000 per occurrence and \$3,000,000 in the aggregate, written on an occurrence form, that provides coverage for its work undertaken pursuant to this Grant. If a policy written on an occurrence form is not commercially available, the claims-made policy shall remain in effect for the duration of this Grant and for at least two years beyond the completion and acceptance of the work under this Grant, or, alternatively, a two year extended reporting period must be purchased. The Grantee, Subgrantee or Subcontractor shall be responsible for all claims, damages, losses or expenses, including attorney's fees, arising out of or resulting from such party's performance of professional services under this Grant, a subcontract or subgrant.

##### v. Umbrella Liability Insurance

For construction projects exceeding \$10,000,000, Grantee, Subgrantees and Subcontractors shall maintain umbrella/excess liability insurance on an occurrence basis in excess of the underlying insurance described in §13B(i)-(iv) above. Coverage shall follow the terms of the underlying insurance, included the additional insured and waiver of subrogation provisions. The amounts of insurance required in subsections above may be satisfied by the Grantee, Subgrantee and

Subcontractor purchasing coverage for the limits specified or by any combination of underlying and umbrella limits, so long as the total amount of insurance is not less than the limits specified in each section previously mentioned. The insurance shall have a minimum amount of \$5,000,000 per occurrence and \$5,000,000 in the aggregate.

**vi. Property Insurance**

This subsection shall apply if Grant Funds are provided for the acquisition, construction, or rehabilitation of real property.

Insurance on the buildings and other improvements now existing or hereafter erected on the premises and on the fixtures and personal property included in the Subject Property against loss by fire, other hazards covered by the so called "all risk" form of policy and such other perils as State shall from time to time require with respect to properties of the nature and in the geographical area of the Subject Property, and to be in an amount at least equal to the replacement cost value of the Subject Property. Grantor will at its sole cost and expense, from time to time and at any time, at the request of State provide State with evidence satisfactory to State of the replacement cost of the Subject Property.

**vii. Flood Insurance**

If the Subject Property or any part thereof is at any time located in a designated official flood hazard area, flood insurance insuring the buildings and improvements now existing or hereafter erected on the Subject Property and the personal property used in the operation thereof in an amount equal to the lesser of the amount required for property insurance identified in §vi above or the maximum limit of coverage made available with respect to such buildings and improvements and personal property under applicable federal laws and the regulations issued thereunder.

**viii. Builder's Risk Insurance**

The subsection shall apply if Grant Funds are provided for construction or rehabilitation of real property.

Grantee, Subgrantee and/or Subcontractor shall purchase and maintain property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial construction/rehabilitation costs, plus value of subsequent modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made or until no person or entity other than the property owner has an insurable interest in the property.

- a) The insurance shall include interests of the property owner, Grantee, Subgrantee, Subcontractors in the Project as named insureds.
- b) All associated deductibles shall be the responsibility of the Grantee, Subcontractor and Subgrantee. Such policy may have a deductible clause but not to exceed \$10,000.
- c) Property insurance shall be on an "all risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Grantee's, Subgrantee's and Subcontractor's services and expenses required as a result of such insured loss.
- d) Builders Risk coverage shall include partial use by Grantee and/or property owner.
- e) The amount of such insurance shall be increased to include the cost of any additional work to be done on the Project, or materials or equipment to be incorporated in the Project, under other independent contracts let or to be let. In such event, Subgrantee and Subcontractor shall be reimbursed for this cost as his or her share of the insurance in the same ratio as the ratio of the insurance represented by such independent contracts let or to be let to the total insurance carried.

**ix. Pollution Liability Insurance**

This subsection shall apply if Grant Funds are provided for the construction or rehabilitation of real property.

If Grantee and/or its Subgrantee or Subcontractor is providing directly or indirectly work with pollution/environmental hazards, they must provide or cause those conducting the work to provide Pollution Liability Insurance coverage. Pollution Liability policy must include contractual liability coverage. The policy limits shall be in the amount of \$1,000,000 with maximum deductible of \$25,000 to be paid by the Grantee's Subcontractor and/or Subgrantee.

**C. Miscellaneous Insurance Provisions**

Certificates of Insurance and/or insurance policies required under this Grant shall be subject to the following stipulations and additional requirements:

**i. Deductible.** Any and all deductibles or self-insured retentions contained in any Insurance policy shall be assumed by and at the sole risk of the Grantee, its Subgrantees or Subcontractors,

**ii. In Force.** If any of the said policies shall fail at any time to meet the requirements of the Grant as to form or substance, or if a company issuing any such policy shall be or at any time cease to be approved by the Division of Insurance of the State of Colorado, or be or cease to be in compliance with any stricter requirements of the Grant, the Grantee, its Subgrantee and its Subcontractor shall promptly obtain a new policy.

**iii. Insurer.** All requisite insurance shall be obtained from financially responsible insurance companies, authorized to do business in the State of Colorado and acceptable to Grantee,

**iv. Additional Insured**

Grantee and the State shall be named as additional insureds on the Commercial General Liability and Automobile Liability Insurance policies (leases and construction Grants require additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent).

**v. Primacy of Coverage**

Coverage required of Grantee, Subgrantees and Subcontractors shall be primary over any insurance or self-insurance program carried by Grantee or the State.

**vi. Cancellation**

The above insurance policies shall include provisions preventing cancellation or non-renewal without at least 45 days prior notice to the Grantee and Grantee shall forward such notice to the State in accordance with §16 (Notices and Representatives) within seven days of Grantee's receipt of such notice.

**vii. Subrogation Waiver**

All insurance policies in any way related to this Grant and secured and maintained by Grantee or its Subgrantees and Subcontractors as required herein shall include clauses stating that each carrier shall waive all rights of recovery, under subrogation or otherwise, against Grantee or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

**D. Certificates**

Grantee, Subgrantee and Subcontractor shall provide certificates showing insurance coverage required hereunder to the State within seven business days of the Effective Date of this Grant or of their respective subcontract or subgrant. No later than 15 days prior to the expiration date of any such coverage, Grantee, Subgrantee and Subcontractor shall deliver to the State or Grantee certificates of insurance evidencing renewals thereof. In addition, upon request by the State at any other time during the term of this Grant, subgrant or subcontract, Grantee, Subgrantee and Subcontractor shall, within 10 days of such request, supply to the State evidence satisfactory to the State of compliance with the provisions of this §13.

**14. BREACH**

**A. Defined**

In addition to any breaches specified in other sections of this Grant, the failure of either Party to perform any of its material obligations hereunder in whole or in part or in a timely or satisfactory manner, constitutes a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Grantee, or the appointment of a receiver or similar officer for Grantee or any of

its property, which is not vacated or fully stayed within 20 days after the institution or occurrence thereof, shall also constitute a breach.

**B. Notice and Cure Period**

In the event of a breach, notice of such shall be given in writing by the aggrieved Party to the other Party in the manner provided in §16. If such breach is not cured within 30 days of receipt of written notice, or if a cure cannot be completed within 30 days, or if cure of the breach has not begun within 30 days and pursued with due diligence, the State may exercise any of the remedies set forth in §15. Notwithstanding anything to the contrary herein, the State, in its sole discretion, need not provide advance notice or a cure period and may immediately terminate this Grant in whole or in part if reasonably necessary to preserve public safety or to prevent immediate public crisis.

**15. REMEDIES**

If Grantee is in breach under any provision of this Grant or if the State terminates this Grant pursuant to §15(B), the State shall have the remedies listed in this §15 in addition to all other remedies set forth in other sections of this Grant following the notice and cure period set forth in §14(B), if applicable. The State may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.

**A. Termination for Cause and/or Breach**

If Grantee fails to perform any of its obligations hereunder with such diligence as is required to ensure its completion in accordance with the provisions of this Grant and in a timely manner, the State may notify Grantee of such non-performance in accordance with the provisions herein. If Grantee thereafter fails to promptly cure such non-performance within the cure period, the State, at its option, may terminate this entire Grant or such part of this Grant as to which there has been delay or a failure to properly perform. Exercise by the State of this right shall not be deemed a breach of its obligations hereunder. Grantee shall continue performance of this Grant to the extent not terminated, if any.

**i. Obligations and Rights**

To the extent specified in any termination notice, Grantee shall not incur further obligations or render further performance hereunder past the effective date of such notice, and shall terminate outstanding orders and subgrants/subcontracts with third parties. However, Grantee shall complete and deliver to the State all Work, Services and Goods not cancelled by the termination notice and may incur obligations as are necessary to do so within this Grant's terms. At the sole discretion of the State, Grantee shall assign to the State all of Grantee's right, title, and interest under such terminated orders or subgrants/subcontracts. Upon termination, Grantee shall take timely, reasonable and necessary action to protect and preserve property in the possession of Grantee in which the State has an interest. All materials owned by the State in the possession of Grantee shall be immediately returned to the State.

**ii. Payments**

The State shall reimburse Grantee only for accepted performance up to the date of termination. If, after termination by the State, it is determined that Grantee was not in breach or that Grantee's action or inaction was excusable, such termination shall be treated as a termination in the public interest and the rights and obligations of the Parties shall be the same as if this Grant had been terminated in the public interest, as described herein.

**iii. Damages and Withholding**

Notwithstanding any other remedial action by the State, Grantee also shall remain liable to the State for any damages sustained by the State by virtue of any breach under this Grant by Grantee and the State may withhold any payment to Grantee for the purpose of mitigating the State's damages, until such time as the exact amount of damages due to the State from Grantee is determined. The State may withhold any amount that may be due to Grantee as the State deems necessary to protect the State, including loss as a result of outstanding liens or claims of former lien holders, or to reimburse the State for the excess costs incurred in procuring similar goods or services.

**B. Early Termination in the Public Interest**

The State is entering into this Grant for the purpose of carrying out the public policy of the State of Colorado, as determined by its Governor, General Assembly, and/or Courts. If this Grant ceases to further

the public policy of the State, the State, in its sole discretion, may terminate this Grant in whole or in part. Exercise by the State of this right shall not constitute a breach of the State's obligations hereunder. This subsection shall not apply to a termination of this Grant by the State for cause or breach by Grantee, which shall be governed by §15(A) or as otherwise specifically provided for herein.

**i. Method and Content**

The State shall notify Grantee of such termination in accordance with §16. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Grant.

**ii. Obligations and Rights**

Upon receipt of a termination notice, Grantee shall be subject to and comply with the same obligations and rights set forth in §15(A)(i).

**iii. Payments**

If this Grant is terminated by the State pursuant to this §15(B), Grantee shall be paid an amount which bears the same ratio to the total reimbursement under this Grant as the Services satisfactorily performed bear to the total Services covered by this Grant, less payments previously made. Additionally, if this Grant is less than 60% completed, the State may reimburse Grantee for a portion of actual out-of-pocket expenses (not otherwise reimbursed under this Grant) incurred by Grantee which are directly attributable to the uncompleted portion of Grantee's obligations hereunder; provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Grantee hereunder.

**C. Termination for No Substantial Progress in the Work**

The State may elect to terminate this Grant upon receipt and review of any Quarterly Progress Report, submitted per the time periods defined in Exhibit E – Project Performance Plan, if such Quarterly Progress Report fails to evidence Substantial Progress in the Work as directed, defined and expected under Exhibit B. Further, the State may elect to terminate this Grant if the Grantee fails to complete Project Closeout within **three months** of completion of the Work. Exercise by the State of this right shall not be deemed a breach of its obligations hereunder.

**i. Obligations and Rights**

To the extent specified in any termination notice, Grantee shall not incur further obligations or render further performance hereunder past the effective date of such notice, and shall terminate outstanding orders and subgrants/subcontracts with third parties. However, Grantee shall complete and deliver to the State all Work, Services and Goods not cancelled by the termination notice and may incur obligations as are necessary to do so within this Grant's terms. At the sole discretion of the State, Grantee shall assign to the State all of Grantee's right, title, and interest under such terminated orders or subgrants/subcontracts. Upon termination, Grantee shall take timely, reasonable and necessary action to protect and preserve property in the possession of Grantee in which the State has an interest. All materials owned by the State in the possession of Grantee shall be immediately returned to the State.

**ii. Payments**

The State shall reimburse Grantee only for accepted performance up to the date of termination.

**iii. Damages and Withholding**

Notwithstanding any other remedial action by the State, Grantee also shall remain liable to the State for any damages sustained by the State by virtue of any breach under this Grant by Grantee and the State may withhold any payment to Grantee for the purpose of mitigating the State's damages, until such time as the exact amount of damages due to the State from Grantee is determined. The State may withhold any amount that may be due to Grantee as the State deems necessary to protect the State, including loss as a result of outstanding liens or claims of former lien holders, or to reimburse the State for the excess costs incurred in procuring similar goods or services.

**D. Remedies Not Involving Termination**

The State, at its sole discretion, may exercise one or more of the following remedies in addition to other remedies available to it:

**i. Suspend Performance**

Suspend Grantee's performance with respect to all or any portion of this Grant pending necessary corrective action as specified by the State without entitling Grantee to an adjustment in price/cost or performance schedule. Grantee shall promptly cease performance and incurring costs in accordance with the State's directive and the State shall not be liable for costs incurred by Grantee after the suspension of performance under this provision.

**ii. Withhold Payment**

Withhold payment to Grantee until corrections in Grantee's performance are satisfactorily made and completed.

**iii. Deny Payment**

Deny payment for those obligations not performed, that due to Grantee's actions or inactions, cannot be performed or, if performed, would be of no value to the State; provided, that any denial of payment shall be reasonably related to the value to the State of the obligations not performed.

**iv. Removal**

Demand removal of any of Grantee's employees, agents, or Subgrantees whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to this Grant is deemed to be contrary to the public interest or not in the State's best interest.

**v. Intellectual Property**

If Grantee infringes on a patent, copyright, trademark, trade secret or other intellectual property right while performing its obligations under this Grant, Grantee shall, at the State's option **(a)** obtain for the State or Grantee the right to use such products and services; **(b)** replace any Goods, Services, or other product involved with non-infringing products or modify them so that they become non-infringing; or, **(c)** if neither of the foregoing alternatives are reasonably available, remove any infringing Goods, Services, or products and refund the price paid therefore to the State.

**16. NOTICES and REPRESENTATIVES**

Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party's principal representative at the address set forth below. In addition to, but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

**A. State:**

Chantal Unfug, Division Director  
Division of Local Government  
Colorado Department of Local Affairs  
1313 Sherman Street, Room 521  
Denver, Colorado 80203  
Email: chantal.unfug@state.co.us

**B. Grantee:**

Joe Reorda, Mayor  
City of Trinidad  
P. O. Box 880  
Trinidad, Colorado 81082  
Email: n/a

**17. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE**

This section  shall |  shall not apply to this Grant.

Any software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials, or Work Product of any type, including drafts, prepared by Grantee in the performance of its obligations under this Grant shall be the exclusive property of the State and, all Work Product shall be delivered

to the State by Grantee upon completion or termination hereof. The State's exclusive rights in such Work Product shall include, but not be limited to, the right to copy, publish, display, transfer, and prepare derivative works. Grantee shall not use, willingly allow, cause or permit such Work Product to be used for any purpose other than the performance of Grantee's obligations hereunder without the prior written consent of the State.

#### **18. GOVERNMENTAL IMMUNITY**

Notwithstanding any other provision to the contrary, nothing herein shall constitute a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the GIA. Liability for claims for injuries to persons or property arising from the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of the GIA and the risk management statutes, CRS §24-30-1501, et seq., as amended.

#### **19. STATEWIDE CONTRACT MANAGEMENT SYSTEM**

If the maximum amount payable to Grantee under this Grant is greater than \$100,000 either on the Effective Date or at anytime thereafter, this §19 applies.

Grantee agrees to be governed, and to abide, by the provisions of CRS §24-102-205, §24-102-206, §24-103-601, §24-103.5-101 and §24-105-102 concerning the monitoring of vendor performance on state Grants and inclusion of Grant performance information in a statewide Contract Management System.

Grantee's performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this Grant, State law, including CRS §24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation and Review of Grantee's performance shall be part of the normal Grant administration process and Grantee's performance will be systematically recorded in the statewide Contract Management System. Areas of Evaluation and Review shall include, but shall not be limited to quality, cost and timeliness. Collection of information relevant to the performance of Grantee's obligations under this Grant shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of Grantee's obligations. Such performance information shall be entered into the statewide Contract Management System at intervals established herein and a final Evaluation, Review and Rating shall be rendered within 30 days of the end of the Grant term. Grantee shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain work progress.

Should the final performance Evaluation and Review determine that Grantee demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by the Department of Local Affairs, and showing of good cause, may debar Grantee and prohibit Grantee from receiving future grants and bidding on future contracts. Grantee may contest the final Evaluation, Review and Rating by: (a) filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS §24-105-102(6)), or (b) under CRS §24-105-102(6), exercising the debarment protest and appeal rights provided in CRS §§24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of Grantee, by the Executive Director, upon a showing of good cause.

#### **20. RESTRICTION ON PUBLIC BENEFITS**

This section  shall |  shall not apply to this Grant.

Grantee must confirm that any individual natural person is lawfully present in the United States pursuant to CRS §24-76.5-101 et seq. when such individual applies for public benefits provided under this Grant by requiring the applicant to:

- A. Produce an identification document in accordance with §2.1.1 through §2.1.3 of Colorado Department of Revenue's Rule #1 CCR 201-17, Rule for Evidence of Lawful Presence, as amended.
- B. Execute an affidavit herein attached as **Form 1**, Residency Declaration, stating
  - i. That he or she is a United States citizen or legal permanent resident; or
  - ii. That he or she is otherwise lawfully present in the United States pursuant to federal law.

[The following applies if Grant is funded with federal funds].

Notwithstanding the foregoing, to the extent that there is any conflict with the provisions above or those set forth in the Residency Declaration attached hereto as **Form 1** and any provision of federal law, the provisions of federal law shall prevail.

## 21. GENERAL PROVISIONS

### A. Assignment and Subgrants

Grantee's rights and obligations hereunder are personal and may not be transferred, assigned or subgranted without the prior, written consent of the State. Any attempt at assignment, transfer, or subgranting without such consent shall be void. All assignments, subgrants, or subcontracts approved by Grantee or the State are subject to all of the provisions hereof. Grantee shall be solely responsible for all aspects of subgranting and subcontracting arrangements and performance.

### B. Binding Effect

Except as otherwise provided in §21(A), all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.

### C. Captions

The captions and headings in this Grant are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions.

### D. Counterparts

This Grant may be executed in multiple identical original counterparts, all of which shall constitute one agreement.

### E. Entire Understanding

This Grant represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous additions, deletions, or other changes hereto shall not have any force or effect whatsoever, unless embodied herein.

### F. Indemnification-General

Grantee shall, to the extent permitted by law, indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Grantee, or its employees, agents, Subgrantees, or assignees pursuant to the terms of this Grant; however, the provisions hereof shall not be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions, of the GIA, or the Federal Tort Claims Act, 28 U.S.C. 2671 et seq., as applicable, as now or hereafter amended.

### G. Jurisdiction and Venue

All suits, actions, or proceedings related to this Grant shall be held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

### H. List of Selected Applicable Laws

At all times during the performance of this Grant, Grantee shall comply with all applicable Federal and State laws and their implementing regulations, currently in existence and as hereafter amended, including without limitation those set forth on **Exhibit A**, Applicable Laws. Grantee also shall require compliance with such laws and regulations by subgrantees under subgrants permitted by this Grant.

### I. Use Covenants

This section  shall |  shall not apply to this Grant:

For Subject Property that is owned by Grantee upon execution of this Grant, Grantee shall record a Use Covenant substantially equivalent to **Exhibit F** with the county in which the property resides as soon as reasonably practicable after execution of this Grant. For Subject Property acquired by Grantee using Grant Funds, Grantee shall record a Use Covenant substantially equivalent to **Exhibit F** with the county in which the property resides as soon as reasonably practicable after acquisition of such property.

### J. Modification

#### i. By the Parties

Except as specifically provided in this Grant, modifications of this Grant shall not be effective unless agreed to in writing by the Parties in an amendment hereto, properly executed and approved in accordance with applicable Colorado State law, State Fiscal Rules, and Office of the State Controller Policies, including, but not limited to, the policy entitled MODIFICATION OF CONTRACTS -

TOOLS AND FORMS. Changes to the Grant shall be authorized to be approved by the following State or DOLA parties:

- a) Approval by Division Director  
The Division Director of DOLA or his delegee shall have authority to approve changes to the Responsible Administrator and Key Personnel specified in §5 of Exhibit B and the Principal Representative in §16.
- b) Approval by DOLA Controller  
The DOLA Controller shall have authority to approve all changes to the Grant which are not reserved to the Division Director above.

**ii. By Operation of Law**

This Grant is subject to such modifications as may be required by changes in Federal or Colorado State law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this Grant on the effective date of such change, as if fully set forth herein.

**K. Order of Precedence**

The provisions of this Grant shall govern the relationship of the Parties. In the event of conflicts or inconsistencies between this Grant and its exhibits and attachments including, but not limited to, those provided by Grantee, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- i. Exhibit A (Applicable Laws)
- ii. Colorado Special Provisions
- iii. The provisions of the main body of this Grant (excluding the cover page)
- iv. Any executed Option Letters
- v. Exhibit B (Scope of Project)
- vi. Exhibit E (Project Performance Plan)
- vii. The cover page of this Grant

**L. Severability**

Provided this Grant can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof.

**M. Survival of Certain Grant Terms**

Notwithstanding anything herein to the contrary, provisions of this Grant requiring continued performance, compliance, or effect after termination hereof, shall survive such termination and shall be enforceable by the State if Grantee fails to perform or comply as required.

**N. Taxes**

The State is exempt from all federal excise taxes under IRC Chapter 32 (No. 84-730123K) and from all State and local government sales and use taxes under CRS §§39-26-101 and 201 et seq. Such exemptions apply when materials are purchased or services rendered to benefit the State; provided however, that certain political subdivisions (e.g., City of Denver) may require payment of sales or use taxes even though the product or service is provided to the State. Grantee shall be solely liable for paying such taxes as the State is prohibited from paying for or reimbursing Grantee for them.

**O. Third Party Beneficiaries**

Enforcement of this Grant and all rights and obligations hereunder are reserved solely to the Parties, and not to any third party. Any services or benefits which third parties receive as a result of this Grant are incidental to the Grant, and do not create any rights for such third parties.

**P. Waiver**

Waiver of any breach of a term, provision, or requirement of this Grant, or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.

**Q. CORA Disclosure**

To the extent not prohibited by federal law, this Grant and the performance measures and standards under CRS §24-103.5-101, if any, are subject to public release through the Colorado Open Records Act, CRS §24-72-101, et seq.

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## 22. COLORADO SPECIAL PROVISIONS

A. The Special Provisions apply to all Grants except where noted in *italics*.

i. **CONTROLLER'S APPROVAL. CRS §24-30-202 (1).**

This Grant shall not be deemed valid until it has been approved by the Colorado State Controller or designee.

ii. **FUND AVAILABILITY. CRS §24-30-202(5.5).**

Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

iii. **GOVERNMENTAL IMMUNITY.**

No term or condition of this Grant shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

iv. **INDEPENDENT CONTRACTOR**

Grantee shall perform its duties hereunder as an independent Grantee and not as an employee. Neither Grantee nor any agent or employee of Grantee shall be deemed to be an agent or employee of the State. Grantee and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Grantee or any of its agents or employees. Unemployment insurance benefits shall be available to Grantee and its employees and agents only if such coverage is made available by Grantee or a third party. Grantee shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Grant. Grantee shall not have authorization, express or implied, to bind the State to any Grant, liability or understanding, except as expressly set forth herein. Grantee shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.

v. **COMPLIANCE WITH LAW.**

Grantee shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

vi. **CHOICE OF LAW.**

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this grant. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Grant, to the extent capable of execution.

vii. **BINDING ARBITRATION PROHIBITED.**

The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this Grant or incorporated herein by reference shall be null and void.

viii. **SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.**

State or other public funds payable under this Grant shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Grantee hereby certifies and warrants that, during the term of this Grant and any extensions, Grantee has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Grantee is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Grant, including, without

limitation, immediate termination of this Grant and any remedy consistent with federal copyright laws or applicable licensing restrictions.

**ix. EMPLOYEE FINANCIAL INTEREST. CRS §§24-18-201 and 24-50-507.**

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Grant. Grantee has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Grantee's services and Grantee shall not employ any person having such known interests.

**x. VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4.**

[*Not applicable to intergovernmental agreements*] Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.

**xi. PUBLIC GRANTS FOR SERVICES. CRS §8-17.5-101.**

[*Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental Agreements, or information technology services or products and services*] Grantee certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who shall perform work under this Grant and shall confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Grant, through participation in the E-Verify Program or the State program established pursuant to CRS §8-17.5-102(5)(c), Grantee shall not knowingly employ or contract with an illegal alien to perform work under this Grant or enter into a grant with a Subgrantee that fails to certify to Grantee that the Subgrantee shall not knowingly employ or contract with an illegal alien to perform work under this Grant. Grantee (a) shall not use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this Grant is being performed, (b) shall notify the Subgrantee and the granting State agency within three days if Grantee has actual knowledge that a Subgrantee is employing or contracting with an illegal alien for work under this Grant, (c) shall terminate the Subgrant if a Subgrantee does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Grantee participates in the State program, Grantee shall deliver to the granting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Grantee has examined the legal work status of such employee, and shall comply with all of the other requirements of the State program. If Grantee fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the granting State agency, institution of higher education or political subdivision may terminate this Grant for breach and, if so terminated, Grantee shall be liable for damages.

**xii. PUBLIC GRANTS WITH NATURAL PERSONS. CRS §24-76.5-101.**

Grantee, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the Effective Date of this Grant.

(Special Provisions - effective 1/1/09)

**SIGNATURE PAGE**

**THE PARTIES HERETO HAVE EXECUTED THIS GRANT**

**\* Persons signing for Grantee hereby swear and affirm that they are authorized to act on Grantee's behalf and acknowledge that the State is relying on their representations to that effect.**

<b>GRANTEE CITY OF TRINIDAD</b>	<b>STATE OF COLORADO John W. Hickenlooper, GOVERNOR DEPARTMENT OF LOCAL AFFAIRS</b>
By: _____ Name of Authorized Individual (print)	By: _____ Reeves Brown, Executive Director
Title: _____ Official Title of Authorized Individual	Date: _____
_____ *Signature	
Date: _____	<b>PRE-APPROVED FORM CONTRACT REVIEWER</b>
	By: _____ Bret Hillberry, State Grants Program Manager
	Date: _____

**ALL GRANTS REQUIRE APPROVAL BY THE STATE CONTROLLER**

CRS §24-30-202 requires the State Controller to approve all State grants. This Grant is not valid until signed and dated below by the State Controller or delegate. Grantee is not authorized to begin performance until such time. If Grantee begins performing prior thereto, the State of Colorado is not obligated to pay Grantee for such performance or for any goods and/or services provided hereunder.

<b>STATE CONTROLLER Robert Jaros, CPA</b>
By: _____ Barbara M. Casey, CPA, Controller Delegate
Date: _____

### **EXHIBIT A – APPLICABLE LAWS**

Laws, regulations, and authoritative guidance incorporated into this Grant include, without limitation:

1. Colorado Revised Statutes §29-1-601 et seq., as amended, Colorado Local Governments Audit Law.
2. 5 USC552a, as amended, Privacy Act of 1974.
3. 8 USC 1101, Immigration and Nationality Act.
4. 29 USC Chapter 8, §§201, 206, et seq., as amended, Labor.
5. 29 USC Chapter 14, §§621-634, et seq., as amended, Age Discrimination in Employment.
6. 40 USC Subtitle II, et seq., as amended, Public Buildings and Works.
7. 40 USC 327–330, Section 103 and 107, Contract Work Hours and Safety Standards Act, as amended.
8. 40 CFR 1500-1508, as amended, Council on Environmental Quality Regulations Implementing NEPA.
9. 41 CFR Chapter 60, as amended, Executive Order 11246.
10. 41 USC 701, et seq., Drug Free Workplace Act of 1988.
11. 42 USC Chapter 21, et seq., as amended, Civil Rights.
12. CRS §24-34-302, et seq., as amended, Civil Rights Division.
13. CRS §24-34-501 – 510, et seq., as amended, Colorado Housing Act of 1970.
14. CRS §24-75-601 et seq., as amended, Legal Investment of Public Funds.

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## EXHIBIT B – SCOPE OF PROJECT (SOP)

### 1. PURPOSE

**1.1. Energy Impact.** The purpose of the Energy and Mineral Impact Assistance Program is to assist political subdivisions that are socially and/or economically impacted by the development, processing, or energy conversion of minerals and mineral fuels.

### 2. DESCRIPTION OF THE PROJECT(S) AND WORK.

**2.1. Project Description.** The Project consists of restoration of two blocks of Commercial Street, including an intersection, in the City of Trinidad's historic downtown area. This Phase II completes the entire brick street restoration of Commercial Street (begun in EIAF 7136).

**2.2. Work Description.** The restoration Work, located in the City of Trinidad's (Grantee) historic downtown area just east of I-25, focuses on safety and accessibility and streetscape improvements (brick pavers, sidewalks, curb and gutter, utilities and street lights) on Commercial Street from Plum Street to Main Street. This Work is Phase II - it improves an additional 2,898 linear feet and completes the entire brick street restoration of Commercial Street. Improvements associated with this streetscape project include removal, repair, replacement and/or restoration of sidewalks, curbs and gutters, the streetbase, restored brick pavers, street lights, the storm sewer, the sanitary sewer, the water main, and fire hydrants. The Grantee will remove, store, and re-set the historic bricks as In-Kind contribution to the Work. Grantee will own the improvements and, in accordance with §9 below, will hire a contractor to complete the Work.

**2.3. Responsibilities.** Grantee shall be responsible for the completion of the Work and to provide required documentation to DOLA as specified herein.

**2.3.1.** Grantee shall notify DOLA at least 30 days in advance of Project Completion.

**2.4. Recapture of Advanced Funds.** To maximize the use of Grant Funds, the State shall evaluate Grantee's expenditure of the Grant Funds for timeliness and compliance with the terms of this Grant. DOLA reserves the right to recapture advanced Grant Funds when Grantee has not or is not complying with the terms of this Grant.

**2.5. Eligible Expenses.** Eligible expenses shall include: construction costs for the street restoration and streetscape improvements. Engineering costs are not eligible for reimbursement, but may be paid from Grantee funds. Grantee will provide support documentation for all In-Kind contribution of labor, equipment, and materials.

**2.6. Cost Savings.** Cost Savings derived while completing the Project shall be:

**2.6.1.**  split on a pro-rata basis between the State and Grantee

**2.6.2.**  returned to the State

### 3. DEFINITIONS

**3.1. "Cost Savings"** means the Project Budget amount less the amount expended to complete the Work. Cost Savings are determined at the time the Work is completed and the final payment request is submitted by the Grantee to the State. Cost Savings do not result in payment by the State to Grantee above actual expenditures beyond the required ratio, but deobligates unexpended Grant Funds and reduces Grantee's matching funds requirement. State shall provide written notice to Grantee verifying any Cost Savings.

**3.2. "Cumulative Budgetary Line Item Changes"** means a cumulative or increasing accumulation of additional expenses within a specific line item as listed in §6.2 Budget within this **Exhibit B**.

**3.3. Project Budget Line items.**

**3.3.1. "Architectural/Engineering Services"** means professional architectural/engineering fees, RFP/bid advertisements, survey work, water/sewer testing fees, electrical inspection and testing fees, CDPHE permit fees, and attorney's fees.

3.3.2. “Construction/Improvement of Public Roadways” means labor and materials costs, bond and insurance costs, bid advertisements, attorney’s fees, and right-of-way acquisition costs.

3.4. “Project Completion” means the Work is sufficiently complete in accordance with the Grant so it can be utilized for its intended purpose without undue interference.

#### 4. DELIVERABLES

4.1. **Outcome.** The final outcome of this Grant is a reconstructed two block area of a downtown Trinidad street, with historic brick surface made safer and more accessible to the citizens of the City and its visitors.

4.2. **Service Area.** The performance of the Work described within this Grant shall be located in the two blocks of Commercial Street located east of the intersection with I-25, in Trinidad, Colorado.

4.3. **Performance Measures.** Grantee shall comply with the performance measures detailed in **Exhibit E.**

4.4. **Budget Line Item Adjustments.** Line Item Adjustments shall not increase the Grant Funds or the total amount of the Budget.

4.4.1. Grantee shall have authority to adjust individual budget line amounts without approval of the State up to an aggregate of 10% of such line item from which the funds are moved. Such authority shall not allow Grantee to transfer to or between administration budget lines. Grantee’s Responsible Administrator shall send written notification of allowed adjustments to the State within 30 days of such adjustment.

4.4.2. All changes to individual budget lines amounts which are in excess of 10% but less than 24.99% of such line item from which the funds are moved (each a “**Minor Line Item Adjustment**”) shall require prior written approval of the DOLA Controller. Grantee’s Responsible Administrator shall submit a written request for changes pursuant to this Section to the State. Such request shall include the amount of such request, the reason for the request and any necessary documentation. If the State approves such request, the State shall unilaterally execute an Option Letter accepting such request pursuant to §7(c)(i) of the Grant. Grantee is not authorized to perform until Grantee receives an executed Option Letter accepting such change.

4.4.3. All changes to individual budget lines amounts which are in excess of 24.99% of such line item from which the funds are moved shall require a prior written amendment executed by the Grantee and DOLA pursuant to §21(J) of the Grant. Grantee shall submit a written request for changes pursuant to this Section to the State. Such request shall include the amount of such request, the reason for the request and any necessary documentation. Grantee is not authorized to perform until a bi-lateral amendment is fully executed by the DOLA Controller accepting such change.

4.4.4. **Signature Authority.** All Grantee notices and requests submitted to DOLA pursuant to this §4.4 (each a “**Line Item Proposal**”), must be signed and dated by a person authorized to bind the Grantee to such Line Item Proposal.

#### 4.5. Overall Budget Adjustments.

4.5.1. All changes to the overall Budget which are less than 24.99% (each a “**Minor Budget Adjustment**”) shall require prior written approval of the DOLA Controller. Grantee’s Responsible Administrator shall submit a written request for changes pursuant to this Section to the State. Such request shall include the amount of such request, the reason for the request and any necessary documentation. If the State approves such request, the State shall unilaterally execute an Option Letter accepting such request pursuant to §7(c)(ii) of the Grant. Grantee is not authorized to perform until Grantee receives an executed Option Letter accepting such change. Minor Budget Adjustments shall not increase the Grant Funds.

4.5.1.1. **Exception for Setting Final Initial Budget.** Within 30 days of bid opening for its selection of its prime Subcontractor, Grantee shall submit a written request for changes to the overall Budget to revise the initial overall Budget estimate to align it with current market conditions (a “**True-up Budget Proposal**”). Grantee’s Responsible Administrator shall submit a

written request for changes pursuant to this Section to the State. Such request shall include the amount of such request, the reason for the request and any necessary documentation. If the State approves such request, the State shall unilaterally execute an Option Letter accepting such request pursuant to §7(c)(iii) of the Grant. Grantee is not authorized to perform until Grantee receives an executed Option Letter accepting such change. True-up Budget Proposals shall not increase the Grant Funds. The overall Budget adjustment permitted by this §4.5.1.1 is only permitted once under this Grant.

**4.5.2.** All changes to the overall Budget which are in excess of 24.99% shall require a prior written amendment executed by the Grantee and DOLA pursuant to §21(J) of the Grant. Grantee shall submit a written request for changes pursuant to this Section to the State. Such request shall include the amount of such request, the reason for the request and any necessary documentation. Grantee is not authorized to perform until a bi-lateral amendment is fully executed by the DOLA Controller accepting such change.

**4.5.3. Signature Authority.** All Grantee notices and requests submitted to DOLA pursuant to this §4.5 (each a “Budget Proposal”), must be signed and dated by a person authorized to bind the Grantee to such Budget Proposal.

**4.6. Quarterly Pay Request and Status Reports.** Beginning 30 days after the end of the first quarter following execution of this Grant and for each quarter thereafter until termination of this Grant, Grantee shall submit Pay Requests and Status Reports using a form provided by the State. The State shall pay the Grantee for actual expenditures made in the performance of this Grant based on the submission of statements in the format prescribed by the State. The Grantee shall submit Pay Requests setting forth a detailed description and provide documentation of the amounts and types of reimbursable expenses. For quarters in which there are no expenditures to reimburse, Grantee shall indicate zero (0) in the request and specify status of the Work in the Status Report. The report will contain an update of expenditure of funds by line item as per §6.2 of this Exhibit B Scope of Project as well as a projection of all Work expected to be accomplished in the following quarter, including an estimate of Grant Funds to be expended. This report is due within 30 days of the end of the quarter or more frequently at the discretion of the Grantee. See Exhibit E for specific submittal dates.

**4.7. DOLA Acknowledgment.** The Grantee agrees to acknowledge the Colorado Department of Local Affairs in any and all materials or events designed to promote or educate the public about the Work and the Project, including but not limited to: press releases, newspaper articles, op-ed pieces, press conferences, presentations and brochures/pamphlets.

## **5. PERSONNEL**

**5.1. Replacement.** Grantee shall immediately notify the State if any key personnel specified in §5 of this Exhibit B cease to serve. Provided there is a good-faith reason for the change, if Grantee wishes to replace its key personnel, it shall notify the State and seek its approval, which shall be at the State's sole discretion, as the State executed this Grant in part reliance on Grantee's representations regarding key personnel. Such notice shall specify why the change is necessary, who the proposed replacement is, what their qualifications are, and when the change will take effect. Anytime key personnel cease to serve, the State, in its sole discretion, may direct Grantee to suspend Work until such time as replacements are approved. All notices sent under this subsection shall be sent in accordance with §16 of the Grant.

**5.2. Responsible Administrator.** Grantee's performance hereunder shall be under the direct supervision of Louis Fineberg, Planning Director (louis.fineberg@trinidad.co.gov), an employee or agent of Grantee, who is hereby designated as the responsible administrator of this Project. Such administrator shall be updated through the approval process in §5.1. If this person is an agent of the Grantee, such person must have signature authority to bind the Grantee and must provide evidence of such authority.

**5.3. Other Key Personnel:** None. Such key personnel shall be updated through the approval process in §5.1.

**6. FUNDING**

The State provided funds shall be limited to the amount specified under the “Grant Funds” column of §6.2, Budget, below.

**6.1. Matching Funds.** Grantee shall provide the required (*see checked item*)  Matching Funds, as listed in the “Matching Funds” column of §6.2 below during the term of this Project. Funds used as match on previous grant(s) cannot be used as Matching Funds for this Grant.

**6.2. Budget**

Budget Line Item(s)	Total Cost	Grant Funds	Matching Funds	Matching Funds Source
Architectural/Engineering Services	\$96,000	\$0	\$96,000	Grantee
Construction/Improvement of Public Roadways	\$1,274,222	\$970,000	\$154,222 \$150,000	Grantee Cash Grantee In-Kind
<b>Total</b>	<b>\$1,370,222</b>	<b>\$970,000</b>	<b>\$400,222</b>	

**7. PAYMENT**

Payments shall be made in accordance with this section and the provisions set forth in §7 of the Grant.

**7.1. Payment Schedule.** If Work is subcontracted or subgranted and such Subcontractors and/or Subgrantees are not previously paid, Grantee shall disburse Grant Funds received from the State to such Subcontractor or Subgrantee within fifteen days of receipt. Excess funds shall be returned to DOLA.

Payment	Amount	
Interim Payment(s)	\$921,500	Paid upon receipt of actual expense documentation and written Pay Requests from the Grantee for reimbursement of eligible approved expenses.
Final Payment	\$48,500	Paid upon Substantial Completion of the Project (as determined by the State in its sole discretion), provided that the Grantee has submitted, and DOLA has accepted, all required reports.
<b>Total</b>	<b>\$970,000</b>	

**7.2. Remittance Address.** If mailed, payments shall be remitted to the following address unless changed in accordance with §16 of the Grant:

City of Trinidad  
 P. O. Box 880  
 Trinidad, Colorado 81082

**7.3. Interest.** Grantee or Subgrantee may keep interest earned from Grant Funds up to \$100 per year for administrative expenses.

**8. ADMINISTRATIVE REQUIREMENTS**

**8.1. Reporting.** Grantee shall submit the following reports to DOLA using the State-provided forms. DOLA may withhold payment(s) if such reports are not submitted timely.

**8.1.1. Quarterly Pay Request and Status Reports.** Quarterly Pay Requests shall be submitted to DOLA in accordance with §4.6 of this Exhibit B.

**8.1.2. Final Reports.** Within 90 days after the completion of the Project, Grantee shall submit the final Pay Request and Status Report to DOLA.

**8.2. Monitoring.** DOLA shall monitor this Work on an as-needed basis. DOLA may choose to audit the records for activities performed under this Grant. Grantee shall maintain a complete file of all records,

documents, communications, notes and other written materials or electronic media, files or communications, which pertain in any manner to the operation of activities undertaken pursuant to an executed Grant. Such books and records shall contain documentation of the Grantee's pertinent activity under this Grant in accordance with Generally Accepted Accounting Principles.

**8.2.1.Subgrantee/Subcontractor.** Grantee shall monitor its Subgrantees and/or Subcontractors, if any, during the term of this Grant. Results of such monitoring shall be documented by Grantee and maintained on file.

**9. CONSTRUCTION/RENOVATION.** The following subsections shall apply to construction and/or renovation related projects/activities:

**9.1. Plans & Specifications.** Construction plans and specifications shall be drawn up by a qualified engineer or architect licensed in the State of Colorado, or pre-engineered in accordance with Colorado law, and hired by the Grantee through a competitive selection process.

**9.2. Procurement.** A construction contract shall be awarded to a qualified construction firm through a formal selection process with the Grantee being obligated to award the construction contract to the lowest responsive, responsible bidder meeting the Grantee's specifications.

**9.3. Subcontracts.** Copies of any and all contracts entered into by the Grantee in order to accomplish this Project shall be submitted to DOLA upon request, and any and all contracts entered into by the Grantee or any of its Subcontractors shall comply with all applicable federal and state laws and shall be governed by the laws of the State of Colorado.

**9.4. Standards.** Grantee, Subgrantees and Subcontractors shall comply with all applicable statutory design and construction standards and procedures that may be required, including the standards required by Colorado Department of Public Health and Environment, and shall provide the State with documentation of such compliance.

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## EXHIBIT E – PROJECT PERFORMANCE PLAN

<b>Funding:</b> EIAF	<b>Name of Grantee</b> City of Trinidad	
<b>Project Number:</b> 7332	<b>Name of Project</b> Downtown Improvements: Commercial Street Phase II	
<b>DESCRIPTION OF PROJECT:</b>	The Project consists of restoration of two blocks of Commercial Street, including an intersection, in the City of Trinidad's historic downtown area. This Phase II completes the entire brick street restoration of Commercial Street (begun in EIAF 7136).	

**DLG Staff:** Lee Merkel - Regional Manager (719) 544-6577 LM      Bill Gray - Regional Assistant (719) 924-2087 BG

MILESTONES – Grantee shall...	By:	STATE ROLE- DLG shall...	
Complete design.	12/31/14	Review design documents for project file. Provide feedback to Grantee identifying issues or concerns, if any.	<b>ACHIEVED:</b> <b><u>MM/DD/20YY</u></b>
Put Project out to bid.	2/28/15	Assist Grantee with bidding process, if necessary. Provide feedback to Grantee identifying issues or concerns, if any.	<b>ACHIEVED:</b> <b><u>MM/DD/20YY</u></b>
Provide DOLA with Project Timeline.	3/31/15	Review timeline to ensure timely completion of Project. Provide feedback to Grantee identifying issues or concerns, if any.	<b>ACHIEVED:</b> <b><u>MM/DD/20YY</u></b>
Contractor mobilization.	5/1/15	Monitor progress reports from the Grantee. Help Grantee identify if/when a Grant Agreement amendment is needed. Provide feedback to Grantee identifying issues or concerns, if any.	<b>ACHIEVED:</b> <b><u>MM/DD/20YY</u></b>
Project Completion.	November 30, 2015	Review past quarterly reports, conduct on-site monitoring, and review final report.	<b>ACHIEVED:</b> <b><u>MM/DD/20YY</u></b>

<p>Submit <b>quarterly progress reports</b>, which includes: Project Performance Plan accomplishments and a Financial Summary Report for:</p> <p>1<sup>st</sup> Quarter 2014  2<sup>nd</sup> Quarter 2014  3<sup>rd</sup> Quarter 2014  4<sup>th</sup> Quarter 2014  1<sup>st</sup> Quarter 2015  2<sup>nd</sup> Quarter 2015  3<sup>rd</sup> Quarter 2015  4<sup>th</sup> Quarter 2015</p>	<p>(30 calendar days after each quarter):</p> <p>April 30, 2014  July 30, 2014  October 30, 2014  January 30, 2015  April 30, 2015  July 30, 2015  October 30, 2015  January 30, 2016</p>	<p>Review documents and provide follow up technical assistance as necessary.</p> <p>If needed, respond to a request for training within 10 days.</p>	<p><b>ACHIEVED:</b>  <u>MM/DD/20YY</u></p> <p><b>ACHIEVED:</b>  <u>MM/DD/20YY</u></p> <p><b>ACHIEVED:</b>  <u>MM/DD/20YY</u></p> <p><b>ACHIEVED:</b>  <u>MM/DD/20YY</u></p>
<p>Progress shall be evaluated by the Grantee and documented and included at least upon submittal of Quarterly Progress Reports.</p> <p>Such evaluation may consist of any/all of the following monitoring methods:</p> <p>a) on-site walk through inspections of the construction site in order to determine if:</p> <p>i) the contractor has restored an adequate percentage of the street as would be expected under this Grant and Exhibit B (including but not limited to, adhering to agreed upon scheduling/milestones, demolition, salvage and appropriate debris removal, storage of historic materials, subgrade preparation and placement of concrete, gutters, sewer and water lines);</p> <p>ii) the contractor is experiencing delays;</p> <p>iii) the restoration and improvements are progressing in a timely and adequate manner as would be expected under this Grant and Exhibit B (including but not limited to, installation of street lights, curbs and gutters, sidewalks, and appropriately sized storm sewer, sanitary sewer, water main lines);</p> <p>and b) question and answer sessions with the contractor to confirm understanding by all parties as to the nature of the Work and how far along it should be dependent upon the Quarter under review.</p>			

Submit, at a minimum <b>quarterly</b> basis, <b>pay requests</b> and supporting documentation of expenses.	April 30, 2014 July 30, 2014 October 30, 2014 January 30, 2015 April 30, 2015 July 30, 2015 October 30, 2015 January 30, 2016	Review backup documentation and proof of payment prior to approving pay request. Reimbursement should not exceed pro rata share.	<b>ACHIEVED:</b> <b><u>MM/DD/20YY</u></b>
Submit the <b>Project Final Report</b> to DLG within 90 days after the Project Completion or expiration of Grant Agreement.	February 28, 2016	Provide forms to Grantee within 30 days of completion of work or end of the Grant Agreement. Process the Final Report and deobligate any remaining grant funds within 30 days of receiving a complete Final report.	<b>ACHIEVED:</b> <b><u>MM/DD/20YY</u></b>

## QUARTERLY QUESTIONS

List Reimbursement Requests for the three months being reported on:
<b><u>Month</u></b> January <b><u>Amount</u></b>
<b><u>Month</u></b> January <b><u>Amount</u></b>
<b><u>Month</u></b> January <b><u>Amount</u></b>
Were any months "zero payment" (no costs incurred) during this quarter? If so, please provide an explanation.
What are the forecasted costs for the next quarter?
Are the budget lines still adequate? Is a contract amendment needed at this time? Are there any anticipated concerns or issues?
Do you foresee any potential problems meeting the Grant Agreement completion deadline?
Were previously identified problems (if any) corrected? Was a budget adjustment needed/done to address the problem(s)?

## EXHIBIT G Form of Option Letter

Date:	Original Grant CMS #:	Option Letter #	CMS Routing #
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**1) OPTIONS:**

- a. Option to issue a new Budget (§6.2 of Exhibit B) for a Minor Line Item Adjustment (as defined in §4.4.2 of Exhibit B).
- b. Option to issue a new Budget (§6.2 of Exhibit B) for a Minor Budget Adjustment (as defined in §4.5.1 of Exhibit B).
- c. Option to issue a new Budget (§6.2 of Exhibit B) for acceptance of a True-Up Budget Proposal (as defined in §4.5.1.1 of Exhibit B).

**2) REQUIRED PROVISIONS.** All Option Letters shall contain the appropriate provisions set forth below:

- a. **For use with Option 1(a):** In accordance with §7(C)(i) of the Original Grant referenced above between the State of Colorado, acting by and through the Colorado Department of Local Affairs, and **Grantee's Name ("Grantee")**, the State hereby approves the Minor Line Item Adjustment listed on the attached revised Budget for §6.2 of Exhibit B. Section 6.2 of Exhibit B of the Original Grant is hereby deleted and replaced with the attached §6.2 of Exhibit B. All references to §6.2 of Exhibit B in the Original Grant shall refer to the attached Exhibit. Minor Line Item Adjustments shall not increase the Grant Funds or the total amount of the Budget.
- b. **For use with Option 1(b):** In accordance with §7(C)(ii) of the Original Grant referenced above between the State of Colorado, acting by and through the Colorado Department of Local Affairs, and **Grantee's Name ("Grantee")**, the State hereby approves the Minor Budget Adjustment listed on the attached revised Budget for §6.2 of Exhibit B. Section 6.2 of Exhibit B of the Original Grant is hereby deleted and replaced with the attached §6.2 of Exhibit B. All references to §6.2 of Exhibit B in the Original Grant shall refer to the attached Exhibit. Minor Budget Adjustments shall not increase the Grant Funds.
- c. **For use with Option 1(c):** In accordance with §7(C)(iii) of the Original Grant referenced above between the State of Colorado, acting by and through the Colorado Department of Local Affairs, and **Grantee's Name ("Grantee")**, the State hereby approves the True-Up Budget Proposal listed on the attached revised Budget for §6.2 of Exhibit B. Section 6.2 of Exhibit B of the Original Grant is hereby deleted and replaced with the attached §6.2 of Exhibit B. All references to §6.2 of Exhibit B in the Original Grant shall refer to the attached Exhibit. True-Up Budget Proposals shall not increase the Grant Funds.

**3) Effective Date.** The effective date of this Option Letter is upon approval of the State Controller or Insert start date, whichever is later.

**STATE OF COLORADO**  
**John W. Hickenlooper GOVERNOR**  
 Colorado Department of Local Affairs

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By: Reeves Brown, Executive Director

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

**ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER**

CRS §24-30-202 requires the State Controller to approve all State contracts. This Option Letter is not valid until signed and dated below by the State Controller or delegate. Grantee is not authorized to begin performance until such time. If Grantee begins performing prior thereto, the State of Colorado is not obligated to pay Grantee for such performance or for any goods and/or services provided hereunder.

**STATE CONTROLLER**  
**Robert Jaros, CPA**

By: \_\_\_\_\_  
 Barbara M. Casey, Controller Delegate

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