MONTROSE • COLORADO

CITY COUNCIL WORK SESSION
Monday, July 31, 2023 - 10:00 AM
City Council Chambers, Elks Civic Building - 107 S. Cascade Ave.

Public participation for this meeting will be in person in the City Council Chambers. The meeting can be viewed via livestream at https://www.cityofmontrose.org/759/Live-Meetings-Viewer and recordings of the meetings can be viewed at https://www.youtube.com/user/MontroseCityGov.

Hearing assistance devices are available for public use. Please let us know if you need accommodation. The City also offers interpretation for Spanish speakers. To allow time to book this resource, please email planningmail@cityofmontrose.org at least three (3) days before the meeting.

1) DISCUSSION ITEMS

A) Sunshine Peak Apartments Community Development Block Grant Application (10 minutes)
Staff: DART and Grant Coordinator Michelle Wingfield and Community Development Specialist Christopher Ottinger

B) Woodgate/East Oak Grove Roundabout and Backage Road Design Contract Award (10 minutes)
Staff: City Engineer Scott Murphy

C) Cable Franchise Agreement with Spectrum Pacific West LLC (20 minutes)
City Attorney Ben Morris

D) City Charter Review Committee Update (30 minutes)
Staff: City Attorney Ben Morris

E) New Campaign Finance Laws for Municipal Elections (15 minutes)
Staff: City Clerk Lisa DelPiccolo and City Attorney Ben Morris

2) GENERAL CITY COUNCIL DISCUSSION

3) STAFF COMMENTS

**Please note that the times listed are estimates only. Actual times may vary depending upon discussion and public comment received.*

TO: City Council

FROM: Michelle Wingfield, DART and Grant Coordinator

DATE: July 31, 2023

SUBJECT: Seeking Approval to Apply for a Community Development Block Grant (CDBG) for Sub-Grant Funding to Montrose County Housing Authority

INTRODUCTION

City of Montrose staff is seeking approval from City Council to apply for a Community Development Block Grant (CDBG) on behalf of the Montrose County Housing Authority. The purpose of this grant application is to secure funding to acquire the Sunshine Peak Apartments located at 748 Cedar Creek Avenue, which currently provides essential low-income housing in the City of Montrose.

BACKGROUND

The Montrose County Housing Authority seeks to acquire the Sunshine Peak Apartments from Sunshine Peak Apartment Homes, LLC to prevent the loss of this property as an affordable housing asset in the community. The City of Montrose aims to secure a Community Development Block Grant (CDBG) to provide sub-grant funding to the Montrose County Housing Authority for this acquisition. The request is for $2,600,000 in grant funds to acquire Phase 1 of the Sunshine Peak Apartments, which comprises 49 residential units.

The CDBG program, administered by the U.S. Department of Housing and Urban Development (HUD), provides funding to local governments to address a wide range of community development needs, including affordable housing initiatives. By leveraging this grant opportunity, the City of Montrose can support the Montrose County Housing Authority's efforts to preserve and expand affordable housing options in the community. By acquiring the property, the Housing Authority will be able to exercise greater control over long-term affordability and maintenance of the housing units.

FINANCIAL CONSIDERATIONS

The total project costs are estimated at $3,850,000, inclusive of acquisition costs, soft costs, and critical repairs. The Montrose County Housing Authority is seeking a CDBG grant in the amount of $2,600,000, which would cover the acquisition. The remaining project costs will be covered by the Montrose County Housing Authority through debt servicing. No matching funds are required for this grant.

RECOMMENDATION

City Staff recommends approval by City Council to authorize the submission of a Community Development Block Grant (CDBG) application to the U.S. Department of Housing and Urban Development (HUD) on behalf of the Montrose County Housing Authority. The requested grant amount of $2,600,000 will be utilized to acquire the Sunshine Peak Apartments and ensure the long-term availability of affordable housing for low-to-middle income individuals and families in Montrose.

RESOLUTION NO. 2023-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTROSE, COLORADO, AUTHORIZING THE FILING OF A COMMUNITY DEVELOPMENT BLOCK GRANT APPLICATION IN ORDER TO FUND HOUSING DEVELOPMENT OPPORTUNITIES WITHIN THE CITY OF MONTROSE, COLORADO.

WHEREAS, the City of Montrose, Colorado, desires to apply for grant funding in order to provide financial assistance for the acquisition of low to moderate income housing within the City of Montrose; and

WHEREAS, the Montrose County Housing Authority is in the process of acquiring Sunshine Peak Apartments, which is a 49-unit affordable housing project in the City of Montrose; and

WHEREAS, the City of Montrose requests a Community Development Block Grant ("CBDG"), administered by the Colorado Division of Housing ("DOH"), in an amount up to $2,600,000.00 to fund the financing gap for the aforementioned housing project; and

WHEREAS, the City of Montrose and the Montrose County Housing Authority expect to enter into an agreement for the provision of CBDG funding to assist with the acquisition costs for the project; and

WHEREAS, the City of Montrose shall submit a grant application to establish and administer a fund to assist community housing projects.

NOW THEREFORE, be it resolved by the City Council of the City of Montrose, Colorado as follows:

Section 1. The City Council of the City of Montrose directs the City Manager, and City Staff, to act in connection with the CDBG grant application and to provide such additional information as may be required by DOH.

RESOLVED AND ADOPTED this _____ day of August, 2023, by the City Council of the City of Montrose.

CITY OF MONTROSE, COLORADO

____
Barbara Bynum, Mayor

ATTEST

____
Lisa DelPiccolo, City Clerk

CONTRACT AWARD RECOMMENDATION

TO: Honorable Mayor and Members of the City Council
FROM: Scott Murphy, *City Engineer*
DATE: July 24, 2023
RE: Woodgate/East Oak Grove Roundabout and Backage Road Design Contract Recommendation
CC: William Bell, Shani Wittenberg

Action
Consider the award of a professional services contract to Felsburg, Holt, and Ullevig in the amount of $215,211.40 for completion of design studies and civil design associated with the Woodgate/East Oak Grove Roundabout and Backage Road Project.

Project Background
In response to building traffic congestion in the area and as envisioned in the City's comprehensive plan, the City of Montrose recently designed and constructed a realignment of Woodgate Road to join up directly with East Oak Grove Road (completed in 2022). As recommended in the traffic studies for the realignment project, it was envisioned that the new intersection of Woodgate and East Oak Grove Roads ("WEOG") would ultimately be constructed as a roundabout. However, the City was unable to construct the roundabout concurrent with the realignment project due to a lack of necessary rights of way on the northern side of East Oak Grove Road as well as schedule and budget limitations that existed at the time of the realignment project.

Since completion of the Woodgate Realignment project, property ownership on the northern side of East Oak Grove Road has changed. The new owners have expressed an interest in partnering to see the roundabout built, intend to annex/develop the surrounding area, and are working to redevelop existing commercial properties towards the northwest (Penn Mall Area). Furthermore, the developers have been working with All Points Transit to situate their new transit center immediately northeast of the roundabout. APT has spent the last several years working to secure a suitable site for their new transit center facility and considers this area an ideal location for their operations given its central location and proximity to amenities. Construction of the transit center it tentatively scheduled to begin in late 2024.

In addition to the roundabout project element, the City's comprehensive plan and the Colorado Department of Transportation's Townsend Avenue access control plan both call for a roadway connection between East Oak Grove and Niagara Roads, east of Townsend Avenue. The intent of this connection is to provide a means for the area's commercial and residential traffic to access a traffic signal and avoid the need to turn left onto Townsend Avenue at uncontrolled intersections.

As part of a public/private partnership to secure the necessary rights of way and construct the WEOG Roundabout and southern reach of the Woodgate Backage Road, the City entered into a development agreement with the adjacent landowners on July 18, 2023. An excerpt from this agreement is included as an attachment to this memo and gives a good overview of the main project elements. It should be noted that the property owners immediately north of this project area have also expressed interest in continuation of the Woodgate Backage Road and the City is currently working to formally secure these rights of way up to Encanto Place.

Request for Proposals and Design Team Recommendation

While the project's development agreement was being finalized, the City issued a request for proposals (RFP) for design of the WEOG Roundabout and backage road on June 12, 2023. This RFP envisioned the following key tasks:

- Perform all property and basemap surveys for the project area
- Perform an updated traffic study to evaluate traffic growth and long-term performance of the intersection. These studies take into account the updated Woodgate Road traffic patterns, work to ensure a roundabout will function as desired into the future, and help to guide design of the roundabout's geometry.
- Perform geotechnical, hydrologic, and hydraulic design studies to aid in design of project elements (pavement thickness, pipe sizes, drainage detention, etc).
- Prepare plats in support of property division and dedication/purchase of rights of way.
- Design roundabout geometry and grading.
- Design utility extensions to the project area with stubs to the adjacent lots to be developed.
- Prepare plans for relocation of conflicting utilities and irrigation infrastructure.
- Prepare project plans, specifications, and cost estimates.
- Coordinate with the All Points Transit design team to ensure project elements match and support their transit center design.

Proposals were publically received on July 11, 2023 from two consultants summarized in Table 1 below. Following receipt of the proposals, each was evaluated by the City of Montrose Engineering Department and a score between 0 and 4 assigned based on weighted evaluation criteria. The City then entered into pricing negotiations with the highest-rated consultant. This method of procurement was utilized for the project given the specialized nature of roundabout design.

TABLE 1
Summary of Consultant Proposals

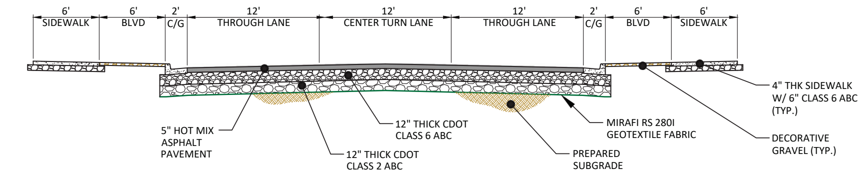
Consultant	Location	Rating
Felsburg, Holt, and Ullevig	Greenwood Village, CO	3.80
Landmark	Loveland, CO	3.00

Using the process described above, the City selected Felsburg, Holt, and Ullevig (FHU) as the preferred consultant for design of the WEOG Roundabout and backage road. The negotiated price for completion of this design is $215,211.40 on a time-and-materials, not-to-exceed basis and this price is within expectations of the City. It should also be noted that FHU was the successful design consultant for both the Miami-Hillcrest and Niagara-Hillcrest Roundabout Projects.

Project Schedule

Project design is proposed to be completed by June of 2024 in anticipation of project construction between December 2024 and July 2025.

Contract Administration and Project Financials
Contract administration and project management will be performed by the City of Montrose engineering department. The opportunity to acquire the necessary rights of way and support the All Points Transit transfer station at this location was not anticipated in 2023. As a result, this design contract was not budgeted. It is anticipated that approximately 50 percent of the design would be expended in 2023 with the balance spent in 2024. As needed, unbudgeted 2023 expenditures would come out of available fund balance within the capital fund or would utilize a budget supplement if necessary. The balance of 2024 design and a portion of construction (to be split between 2024 and 2025) will also be proposed for the 2024 City budget.



SECTION A-A'
TYPICAL ROAD SECTION

REFERENCE DRAWINGS	
MONTROSE AERIAL	2022

REVISIONS			
A	ISSUED FOR TEAM REVIEW	4/24/2023	SAM
B	ISSUED FOR DEVELOPMENT AGREEMENT	6/20/2023	SAM

CITY OF MONTROSE
ENGINEERING DEPARTMENT
1221 64.50 RD.
MONTROSE, CO 81401
PH: 240-1480 FAX: 252-4780
WWW.CITYOFMONTROSE.ORG

DATE:	4/24/2023
JOB NO:	21.9.1
DRAWN:	SAM
DESIGN:	
CHECKED:	
SCALE:	AS SHOWN

WOODGATE/EAST OAK GROVE DEVELOPMENT PROJECT
MONTROSE, COLORADO
PROJECT AREA DEVELOPMENT CONCEPT

EXHIBIT B

ORDINANCE NO. 2635

AN ORDINANCE OF THE CITY OF MONTROSE, COLORADO, REGARDING THE CABLE FRANCHISE AGREEMENT BETWEEN THE CITY OF MONTROSE AND SPECTRUM PACIFIC WEST, LLC, AN INDIRECT SUBSIDIARY OF CHARTER COMMUNICATIONS, INC.

WHEREAS, on July 15, 2010, the Montrose City Council approved the grant of a Cable Television Permit Renewal (Franchise Agreement) to Bresnan Communications, LLC ("Grantee"), for its construction and operation of a cable television system within the City; and

WHEREAS, as the successor in interest to Grantee, the Charter Communications, Inc. entity which holds the franchise in the City is Spectrum Pacific West, LLC ("Charter"); and

WHEREAS, the term of the Franchise Agreement was for ten (10) years, expiring on July 20, 2020; and

WHEREAS, the City and Charter have previously agreed to continue operating under the existing franchise on a month-to-month basis until a new franchise is adopted or until the current agreement is otherwise terminated; and

WHEREAS, Charter is agreeable to continuing providing such services in the City, and has made application to the City for a cable franchise renewal; and

WHEREAS, the City has reviewed Charter's performance under the prior Franchise Agreement and the quality of service during the prior Franchise term, has identified the future cable-related needs and interests of the City and its citizens, has considered the financial, technical and legal qualifications of Charter, and has determined that Charter's plans for operating and maintaining its cable system are adequate, in a full public proceeding affording due process to all parties; and

WHEREAS, the public has had adequate notice and opportunity to comment on Charter's proposal to provide cable service within the City; and

WHEREAS, the City has a legitimate and necessary regulatory role in ensuring the availability of cable service, and reliability of cable systems in its jurisdiction, the availability of local programming (including Educational and Governmental Access programming) and quality customer service; and

WHEREAS, diversity in cable service programming is an important policy goal and the Charter cable system should offer a wide range of programming services; and

WHEREAS, the Montrose City Council desires to grant to Charter and Charter desires to accept the terms and conditions herein set forth for the use of rights-of-way and access easements dedicated and accepted for public use by the City in installing and operating a cable system in the City in accordance with applicable law and the provisions of the new Franchise Agreement by and between the City of Montrose, Colorado and Spectrum Pacific West, LLC; and

WHEREAS, after due evaluation, the Montrose City Council has determined that it is in the best interest of the City and its residents to grant a cable franchise renewal to Spectrum Pacific West, LLC, and indirect subsidiary of Charter Communications, Inc. for a term of ten (10) years as provided in the Franchise Agreement between the City and Charter and attached to this Ordinance.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MONTROSE, COLORADO, as follows:

SECTION 1:

The City Council of the City of Montrose hereby enters into a cable franchise agreement with Spectrum Pacific West, LLC, an indirect subsidiary of Charter Communications, Inc., attached hereto and incorporated herein as **Exhibit A.**

SECTION 2:

The City Council hereby finds, determines and declares that this Ordinance is necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the order, comfort and convenience of the City of Montrose and the inhabitants thereof.

SECTION 3:

The City Council hereby finds, determines and declares that it has the power to adopt this Ordinance pursuant to the authority granted to home rule municipalities by Article XX of the Colorado Constitution and the powers contained in the City of Montrose Charter.

SECTION 4:

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

SECTION 5:

All ordinances and parts of ordinances in conflict with this Ordinance are hereby repealed.

SECTION 6:

This Ordinance shall become effective as set forth in the City of Montrose Charter.

You will please take notice that the Montrose City Council will hold a hearing upon the above Ordinance and the question of its passage on first reading on Tuesday, the 1st of August, 2023, at the hour of 6:00 p.m. at the Elks' Civic Building in Montrose, Colorado.

INTRODUCED, READ, and PASSED on first reading this 1st day of August, 2023.

____
Barbara Bynum, Mayor

ATTEST:

____
Lisa DelPiccolo, City Clerk

INTRODUCED, READ, and ADOPTED on second reading this 15th day of August, 2023.

____
Barbara Bynum, Mayor

ATTEST:

____
Lisa DelPiccolo, City Clerk

EXHIBIT A

SPECTRUM PACIFIC WEST, LLC, AN INDIRECT SUBSIDIARY OF CHARTER COMMUNICATIONS, INC., AND THE CITY OF MONTROSE, COLORADO

CABLE FRANCHISE AGREEMENT
TABLE OF CONTENTS

FRANCHISE AGREEMENT

This Franchise Agreement (this "Agreement") is between the City of Montrose, Colorado, hereinafter referred to as the "Grantor" and Spectrum Pacific West, LLC, an indirect subsidiary of Charter Communications, Inc., hereinafter referred to as the "Grantee."

WHEREAS, the Grantor finds that the Grantee has substantially complied with the material terms of the current Franchise under Applicable Law (as defined below), and that the financial, legal and technical ability of the Grantee is sufficient to provide services, facilities and equipment necessary to meet the future cable-related needs of the community; and

WHEREAS, having afforded the public adequate notice and opportunity for comment, Grantor desires to enter into this Agreement with the Grantee for the construction and operation of a Cable System (as defined below) on the terms set forth herein; and

WHEREAS, the Grantor and the Grantee have complied with all federal and State-mandated procedural and substantive requirements pertinent to the renewal of the Franchise granted by this Agreement.

***NOW, THEREFORE**, the Grantor and the Grantee agree as follows:*

SECTION 1
Definition of Terms

1.1 Terms. For the purpose of this Agreement the following terms, phrases, words and their derivations shall have the following meanings when used herein with initial capital letters. Other defined terms are set forth throughout this Agreement, and shall have the meanings ascribed herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

A. The following terms shall be defined as set forth in the Section 602 of the Cable Act (47 U.S.C. § 522) -- "Affiliate," "Cable Operator," "Cable Service," "Cable System," "Channel," "Franchise" and "Person" -- and "Franchise Fee" shall be as defined in Section 622 of the Cable Act (47 U.S.C. § 542).

B. "Access" shall mean the availability for noncommercial use by various agencies, institutions, organizations, groups and individuals in the community as determined by the Grantor, including the Grantor and its designees, of the Access Channel as set forth in this Agreement, and as permitted under Applicable Law.

C. "Access Channel" means a downstream signaling path provided by the Cable System to deliver Access programming to all Subscribers in the Service Area.

D. “Applicable Law” shall mean 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, provided, however that any statute, ordinance, order or regulation that has been preempted by a higher governmental or legal authority, which prior to preemption had the force and effect of law, shall no longer be considered Applicable Law. This definition shall not be considered a waiver of the right of any party to assert the position that a statute, ordinance, order or regulation has not been preempted.

E. “Council” shall mean the Montrose City Council, the governing body of the Grantor.

F. “Cable Act” shall mean the Cable Communications Policy Act of 1984, as amended (47 U.S.C. §§ 521, et seq.).

G. “Designated Access Provider” shall mean the entity or entities designated now or in the future by the Grantor to manage or co-manage the Access Channel and facilities. The Grantor may be a Designated Access Provider.

H. “FCC” shall mean the Federal Communications Commission and any successor governmental entity thereto.

I. “Gross Revenue” means any revenue, as determined in accordance with generally accepted accounting principles, received by the Grantee (or any Affiliate of the Grantee who is a Cable Operator providing Cable Services over the Cable System in the Service Area) from the operation of the Cable System to provide Cable Services in the Service Area, including but not limited to (1) late fees, (2) installation and reconnection fees, (3) upgrade and downgrade fees, (4) converter and remote control rental fees, (5) parental control device rental fees, (6) advertising revenue (less commissions paid to third party agents, but not internal commissions earned by employees of the Grantee or its Affiliates), (7) home shopping commissions, and (8) interactive guides. Notwithstanding the foregoing, “Gross Revenue” shall not include: (i) any taxes, fees or assessments collected by the Grantee from Subscribers for pass-through to a government agency, including, without limitation, the FCC user fee, Franchise Fee, the Access Capital Grant, or any sales or utility taxes; (ii) unrecovered bad debt; (iii) credits, refunds and deposits paid to Subscribers; and (iv) any exclusions available under Applicable Law.

The parties acknowledge that the Grantee may need to allocate Gross Revenue between Cable Services (which are subject to the Franchise Fee) and non-Cable Services (which are not subject to the Franchise Fee but may be subject to other fees and/or taxes), when these two types of services are bundled together in a discounted package offered to Subscribers. The Grantee shall make such allocation in accordance with generally accepted accounting principles, as defined by the Financial Accounting Standards Board (“FASB”), Emerging Issues Task Force (“EITF”) and/or the U.S. Securities and Exchange Commission (“SEC”), and shall use 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. The Grantor reserves its right to review and to challenge Grantee’s calculations.

In no event shall the Grantee allocate Gross Revenue between Cable Services and non-Cable Services where such services are bundled together in a discounted package offered to Subscribers for the purpose of evading its Franchise Fee obligations under this Agreement.

J. "Person" shall mean an individual, partnership, association, organization, corporation, trust or governmental entity.

K. "Service Area" shall mean the geographic boundaries of the Grantor, and shall include any additions thereto by annexation or other legal means, subject to the exceptions in Section 6.

L. "Standard Installation" shall mean any Cable Service installation that measures up to 125 feet from the point of connection to the Grantee's existing Cable System.

M. "State" shall mean the State of Colorado.

N. "Street" shall include each of the following located within the Service Area: public streets, roadways, highways, bridges, boulevards, avenues, lanes, alleys, sidewalks, circles, drives, transportation and public utility easements, rights of way and similar public ways and extensions and additions thereto, which shall entitle the Grantee to the use thereof for the purpose of installing, operating, repairing and maintaining the Cable System, subject to this Agreement and Applicable Law. "Street" shall not include trails.

O. "Subscriber" shall mean any Person lawfully receiving Cable Service from the Grantee.

SECTION 2
Grant of Franchise

2.1 **Grant**. The Grantor hereby grants to the Grantee a nonexclusive Franchise which authorizes the Grantee to erect, construct, operate and maintain in, upon, along, across, above, over and under the Streets, now in existence and as may be created or established during the term of this Agreement; any poles, wires, cable, underground conduits, manholes, and other conductors and fixtures necessary for the maintenance and operation of a Cable System for the provision of Cable Services. The Grantor owns electric utility and other poles within the City, and this Franchise does not grant any authorization to utilize Grantor-owned poles, which may only be accessed through separate agreement. This Agreement shall constitute both a right and an obligation to provide the Cable Services required by, and to fulfill the obligations set forth in, the provisions of this Agreement, subject to the Grantee obtaining access to City owned facilities on reasonable terms and conditions. Nothing in this Franchise shall be construed to prohibit or authorize the Grantee from offering any other service over its Cable System that is not prohibited by Applicable Law.

2.2 **Term**. This Agreement and the rights, privileges and authority hereby granted shall be for an initial term of twenty (20) years, commencing on the Effective Date of this Agreement as set forth in Section 15.11. If this Agreement is not renewed or terminated in accordance with Applicable Law by the end of the Term, it shall continue, on a month-to-month basis, in accordance with all terms and conditions contained herein, until such renewal or affirmative termination becomes effective.

2.3 Police Powers and Conflicts with Agreement. Notwithstanding any provision to the contrary herein, this Agreement, the Grantor and the Grantee are subject to and shall be governed by Applicable Law, including but not limited to the Cable Act and the City of Montrose Municipal Code. The Grantee shall at all times during the term of this Agreement be subject to all lawful exercise of the Grantor's police power, and the Grantor's right to adopt and enforce generally applicable and non-discriminatory ordinances and regulations necessary to the safety, health, and welfare of the public; provided, however, that such hereinafter enacted ordinances and regulations shall be reasonable and not materially modify the terms of this Agreement. In the event of a conflict between a provision of this Agreement and a provision of Grantor police power reflected in a generally applicable local ordinance, rule or regulation, local law shall be controlling, provided, however, such local law has not been preempted by any federal or state laws, rules, regulations or orders.

SECTION 3
Franchise Renewal

3.1 Procedures for Renewal. The Grantor and the Grantee agree that any proceedings undertaken by the Grantor that relate to the renewal of this Agreement shall be governed by and comply with the provisions of Section 626 of the Cable Act (47 U.S.C. § 546), or any such successor statute. Notwithstanding anything to the contrary set forth herein, the parties agree that at any time during the term of the then current Agreement, while affording the public adequate notice and opportunity for comment, the parties may agree to undertake and finalize negotiations regarding renewal of the then current Agreement and the Grantor may grant a renewal thereof. The parties consider the terms set forth in this section to be consistent with the express provisions of Section 626 of the Cable Act (47 U.S.C. § 546).

SECTION 4
Indemnification and Insurance

4.1 Indemnification.

A. The Grantee shall indemnify and hold the Grantor, its officers, boards, commissions, agents, and employees harmless from any liabilities or judgments for injury to any Person or property to the extent caused by the negligent construction, repair, extension, maintenance, operation or removal of the Grantee's wires, poles or other equipment of any kind or character used in connection with the operation of the Cable System. Notwithstanding the foregoing, the Grantee shall not be obligated to indemnify the Grantor for any damages, liability or claims resulting from the willful misconduct or negligence of the Grantor or for the Grantor's use of the Cable System, including any Access Channel.

B. In addition, if the Grantor is named as a defendant in a complaint, demand, claim or action ("Action") that alleges that the Grantee's actions or omissions or the Cable System was a cause of injury identified in the Action, and subject to subsection 4.1C, the Grantor shall, within ten

(10) business days of receipt of such Action, give the Grantee written notice of its obligation to defend the Grantor, and tender the defense thereof to the Grantee. The Grantee shall have the right to defend, settle or compromise such Actions and the Grantor shall cooperate fully with the Grantee in such defense. Notwithstanding the foregoing, if the Grantee believes in good faith that a tendered Action has little or no merit with respect to the Grantee's liability, the Grantee may refuse the defense of such Action, in which case the Grantor will in good faith defend the Action and the Grantee shall cooperate fully with the Grantor in such defense and may participate in such defense at the Grantee's option; provided that if the Grantee is determined to be liable in such Action, the Grantee shall be responsible for indemnifying the Grantor as set forth in subsection 4.1A and reimburse the Grantor for the pro rata (with respect to any other claims made in the same Action, if any) attorney fees and other costs incurred by the Grantor associated with the defense. If the Grantor believes that any such Action should be settled or compromised in any manner that will result in liability or other obligation for or restraint on the Grantee under this Agreement or otherwise, such settlement or compromise shall only be done with the prior written consent of the Grantee.

C. Notwithstanding subsection 4.1A, if the Grantor determines in good faith that its interests cannot be represented by the Grantee, the Grantee shall be excused from any obligation to represent the Grantor.

D. The indemnification obligations of the Grantee set forth in this Agreement are not limited in any way by the amount or type of damages or compensation payable by or for the Grantee under Workers' Compensation, disability or other employee benefit acts, acceptance of insurance certificates required under this Agreement or the terms, applicability or limitations of any insurance held by the Grantee, provided, however, that the Grantee's obligations to indemnify pursuant to this section shall be reduced by any amounts paid by any third parties directly or indirectly to the indemnified parties related to the same claims, including insurance proceeds.

4.2 Insurance.

A. The Grantee shall maintain throughout the term of this Agreement insurance in amounts at least as follows but in no event shall occurrence basis minimum limits be less than provided for by C.R.S. §24-10-114(1)(b):

Workers' Compensation	Statutory Limits
Commercial General Liability	$1,000,000 per occurrence
	$2,000,000 General Aggregate
Auto Liability including coverage on all owned, non-owned hired autos	$1,000,000 per occurrence (C.S.L.) Combined Single Limit (C.S.L.)
Umbrella Liability	$1,000,000 per occurrence

B. The Grantor shall be added as an additional insured, arising out of work performed by the Grantee, to the above Commercial General Liability, Auto Liability and Umbrella Liability insurance coverages.

C. The Grantee shall furnish the Grantor with current certificates of insurance evidencing such coverage upon request.

SECTION 5
Service Obligations

5.1 No Discrimination. The Grantee shall not deny Cable Service, deny access to Cable Service, or otherwise discriminate against Subscribers, Access Channel users, or general citizens on the basis of race, color, religion, national origin, age, sex or sexual orientation. The Grantee shall comply at all times with all Applicable Laws relating to nondiscrimination. Subject to Section 6 and the Grantee's rights under Section 625 of the Cable Act (47 U.S.C. § 545), all residential structures in the Service Area shall have the same availability of Cable Services from the Grantee's Cable System under non-discriminatory rates, terms and conditions.

5.2 Privacy. The Grantee shall fully comply with the privacy rights of Subscribers as contained in Section 631 of the Cable Act (47 U.S.C. § 551).

SECTION 6
Service Availability

6.1 Service Area. The Grantee shall continue to provide Cable Service to all residences within the Service Area where the Grantee offers Cable Service as of the Effective Date. Upon receipt of a request for Cable Service from a potential residential Subscriber(s) in an unserved portion of the Service Area, and a written commitment from such Subscriber(s) (or payment in advance if required by the Grantee) to pay any applicable non-Standard Installation charges associated with providing Cable Service (if applicable), the Grantee shall extend the Cable System to the Street in front of such residence(s), provided that the average density is equal to or greater than thirty (30) residences per linear strand mile of cable as measured from the Grantee's closest technologically feasible tie-in point to its trunk line or distribution cable that is actively delivering Cable Service as of the date of such request for Cable Service.

6.2 Subscriber Charges for Extensions of the Cable System. No potential Subscriber shall be refused Cable Service arbitrarily. However, if an area does not meet the density requirements of Section 6.1 above, the Grantee shall only be required to extend the Cable System to the Street in that area if the potential Subscribers are willing to pay the capital costs of extending the Cable System and any applicable non-Standard Installation charges associated with providing Cable Service. The Grantee may require that payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance. Subscribers shall also be responsible for any Standard or non-Standard Installation charges to extend the Cable System from the tap to the residence. Such cost estimates shall be submitted to and accepted by the potential Subscriber(s) in writing before any Cable System extension or installation is required. Notwithstanding the foregoing, the Grantee shall have the right, but not the obligation, to extend the Cable System into any annexed area which is not contiguous to the present Service Area of the Grantee, if the Grantee does not, at the time of annexation, have the legal authority to locate its Cable System in the areas necessary to reach such annexed parts of the Service Area. At such time as the Grantee has the legal authority to access the newly annexed areas, Cable Service shall be made available in accordance with the density requirements of this Section 6.2.

6.3 Limitations. Nothing herein shall require the Grantee to provide Cable Service to any Person who fails to abide by the Grantee's terms and conditions of Cable Service. Nothing herein shall be construed to limit the Grantee's ability to offer or provide bulk rate discounts or promotions where applicable, to the extent permitted under Applicable Law. The Grantor acknowledges that the Grantee cannot control the dissemination of particular Cable Services beyond the point of demarcation at a multiple dwelling unit. Cable Service offered to Subscribers pursuant to this Agreement shall be conditioned upon the Grantee having legal access to any such Subscriber's dwelling unit or other units wherein such Cable Service is provided.

6.4 New Development Underground. In cases of new construction or property development where utilities are to be placed underground, the Grantor agrees to require as a condition of issuing a City of Montrose Right-of-Way Work Permit for open trenching to any developer or property owner that such developer or property owner make reasonable efforts to give the Grantee at least thirty (30) but at no time less than five (5), business days, prior written notice of such construction or development, and of the particular dates on which open trenching will be available for the Grantee's installation of conduit, pedestals and/or vaults, and laterals to be provided at the Grantee's expense. The Grantee shall also provide specifications as needed for trenching. Costs of trenching and dedication of Streets required to bring service to the development shall be borne by the developer or property owner; except that if the Grantee fails to install its conduit, pedestals and/or vaults, and laterals within five (5) working days of the date the trenches are available, as designated in the written notice given by the developer or property owner, then should the trenches be closed after the five (5) day period, the cost of new trenching is to be borne by the Grantee.

6.5 Annexation. The Grantor shall promptly provide written notice to the Grantee of its annexation of any territory which is being provided Cable Service by the Grantee or its Affiliates. Such annexed area will be subject to the provisions of this Agreement upon sixty (60) days' written notice from the Grantor, subject to the conditions set forth below and Sections 6.1 and 6.2 above. The Grantor shall also notify the Grantee in writing of all new street address assignments or changes within the Service Area. The Grantee shall within ninety (90) days after receipt of the annexation notice, pay the Grantor the Franchise Fees on Gross Revenue received from the operation of the Cable System to provide Cable Services in any area annexed by the Grantor if the Grantor has provided a written annexation notice that includes the addresses that will be moved into the Service Area in an Excel format or in a format that will allow the Grantee to change its billing system. If the annexation notice does not include the addresses that will be moved into the Service Area, the Grantee shall pay the Franchise Fees within ninety (90) days after it receives the annexed addresses as set forth above. All notices due under this section shall be sent by certified mail, return receipt requested to the addresses set forth in Section 15.5 with a copy to the Director of Government Affairs. In any audit of the Franchise Fees due under this Agreement, the Grantee shall not be liable for the Franchise Fees on annexed areas unless and until the Grantee has received notification and information that meets the standards set forth in this section.

6.6 Service to Public Buildings. Subject to applicable law, Grantee shall provide, without charge, Standard Installation and one outlet [and equipment] of basic Cable Service to the locations listed in Exhibit A hereto. The Cable Service provided pursuant to this Section 6.6 shall not be used for commercial purposes. The Grantor shall take reasonable precautions to prevent any inappropriate use or loss or damage to the Grantee's Cable System.

SECTION 7
Construction and Technical Standards

7.1 Compliance with Codes. All construction practices and installation of equipment shall be done in accordance with Applicable Law.

7.2 Construction Standards and Requirements. All portions of the Grantee's Cable System located in the Streets shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with good engineering practices and performed by experienced maintenance and construction personnel.

7.3 Safety. The Grantee shall at all times employ ordinary care and shall use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage.

7.4 Network Technical Requirements. The Cable System shall be designed, constructed and operated so as to meet those technical standards adopted by the FCC relating to Cable Systems contained in Part 76, Subpart K of the FCC's rules and regulations as may be amended from time to time, regardless of the transmission technology utilized.

7.5 Performance Monitoring.

A. The Grantee shall, at the Grantee's sole expense, test the Cable System consistent with the FCC regulations and all other tests, as required by generally Applicable Law, reasonably necessary to determine compliance with technical standards adopted by the FCC at any time during the term of this Agreement.

B. The Grantee shall maintain written records of all results of its Cable System tests, performed by or for the Grantee, for the period required by the FCC. Copies of such test results will be provided to the Grantor upon request.

C. Grantee shall provide to the Grantor, once a year, upon request a copy of its current written process for resolving complaints about the quality of the video programming services signals delivered to Subscribers.

D. Grantee shall, at Grantee's expense, maintain all aggregate data of Subscriber complaints related to the quality of the video programming service signals delivered by Grantee in the Grantor for a period of at least one (1) year.

E. 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 Grantor upon reasonable request.

F. Grantee shall perform any tests required by the FCC.

7.6 Emergency Use. The Grantee shall comply with the Emergency Alert System ("EAS") requirements of the FCC and State Applicable Law, including all testing requirements. If such requirements include the Grantor's activation of the EAS, then the Grantor shall permit only appropriately trained and authorized Persons to operate the EAS equipment and shall take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in inappropriate use thereof, or any loss or damage to the Cable System. The Grantor's use of the EAS is subject to a heightened standard of care given the purpose of the EAS and as such, the Grantor shall exercise all necessary attention, caution and prudence to ensure that the EAS is only used properly, lawfully and as required to alert citizens of emergencies.

SECTION 8
Conditions on Street Occupancy

8.1 General Conditions. The Grantee shall have the right to utilize existing poles, conduits and other facilities whenever possible and when granted permission by the owners of such facilities for commercially reasonable rates, and shall not construct or install any new, different, or additional poles, conduits, or other facilities on public property without obtaining all legally required permits of the Grantor.

8.2 Underground Construction. The facilities of the Grantee shall be installed underground in those portions of the Service Area where telephone and electric utility services are both already underground or being placed underground at the time of Cable System construction, and in accordance with Applicable Law. All underground transmission lines shall be placed at a minimum of 12 inches in depth. In areas where either telephone or electric utility facilities are installed aerially at the time of Cable System construction, the Grantee may install its facilities aerially with the understanding that at such time as the existing aerial facilities are placed underground by the facilities owner, the Grantee shall likewise place its facilities underground. In the event that any telephone or electric utilities are reimbursed by the Grantor or any agency thereof for the placement of cable underground or the movement of cable, the Grantee shall be reimbursed upon the same terms and conditions as any telephone, electric or other utilities; provided however that nothing herein shall require reimbursement to the Grantee or shall affect the Grantee's undergrounding obligation if the funds which are utilized for the reimbursement of other entities are restricted and preclude reimbursement to the Grantee.

8.3 Construction Codes and Permits. Grantee shall obtain all legally required permits before commencing any construction work, including the opening or disturbance of any Street within the Franchise Area, provided that such permit requirements are of general applicability and such permitting requirements are uniformly and consistently applied by the Grantor as to other public utility companies and other entities operating in the Franchise Area. The Grantor shall cooperate with the Grantee in granting any permits required, providing such grant and subsequent construction by the Grantee shall not unduly interfere with the use of such Streets.

8.4 **System Construction**. All transmission lines, equipment and structures shall be so installed and located as to cause minimum interference with the rights and reasonable convenience of property owners and at all times shall be kept and maintained in a safe, adequate and substantial condition, and in good order and repair. The Grantee shall, at all times, employ ordinary care and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public. Suitable barricades, flags, lights, flares or other devices shall be used at such times and places as are reasonably required for the safety of all members of the public. Any poles or other fixtures placed in any public way by the Grantee shall be placed in such a manner as not to interfere with the usual travel on such public way.

8.5 **Work of Contractors or Subcontractors**. The Grantee's contractors and subcontractors shall be licensed and bonded in accordance with the City's regulations and requirements. Work by contractors and subcontractors is subject to the same restrictions, limitations and conditions as if the work were performed by the Grantee. The Grantee shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf as if the work were performed by it, and shall ensure that all such work is performed in compliance with this Agreement and applicable law. It is the Grantee's responsibility to ensure that contractors, subcontractors or other persons performing work on the Grantee's behalf are familiar with the requirements of this Agreement and applicable laws governing the work performed by them.

8.6 **Restoration of Public Ways**. Grantee shall, at its own expense, restore any damage or disturbance caused to the public way as a result of its operation, construction, or maintenance of the Cable System to a condition reasonably comparable to the condition of the Streets immediately prior to such damage or disturbance. Grantee shall not be responsible to replace landscaping in Streets.

8.7 **Tree Trimming**. Grantee or its designee shall have the authority to trim trees on public property at its own expense as may be necessary to protect its wires and facilities.

8.8 **Relocation for the Grantor**. The Grantee shall, upon receipt of reasonable advance written notice, to be not less than ten (10) business days, protect, support, temporarily disconnect, relocate, or remove any property of Grantee when lawfully required by the Grantor pursuant to its police powers, including, but not limited to a change in street grade, water main, wastewater, storm water or other City public works project. Grantee shall be responsible for any costs associated with these obligations to the same extent all other users of the Grantor rights-of-way are responsible for the costs related to the relocation of their facilities.

8.9 **Relocation for a Third Party**. The Grantee shall, on the request of any Person holding a lawful permit issued by the Grantor, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Street as necessary any property of the Grantee, provided that the expense of such is paid by any such Person benefiting from the relocation and the Grantee is given reasonable advance written notice to prepare for such changes. The Grantee may require such payment in advance. For purposes of this subsection, “reasonable advance written notice” shall be no less than ten (10) business days in the event of a temporary relocation and no less than one hundred twenty (120) days for a permanent relocation.

8.10 Removal in Emergency. Whenever, in case of fire or other disaster, it becomes necessary in the judgment of the Grantor to remove any of the Grantee’s facilities, no charge shall be made by the Grantee against the Grantor for restoration and repair, unless such acts amount to gross negligence by the Grantor.

SECTION 9
Customer Service and Rates

9.1 Customer Service Standards and Consumer Protection. The Grantee shall comply with the customer service standards promulgated by the FCC, as may be amended from time to time. The Grantee shall furnish such information, as reasonably requested by the Grantor, to enable the Grantor to evaluate compliance with the customer service standards in effect at a given time. Upon request, the Grantee will provide Grantor with a copy (or information necessary to access the document electronically) of the form of Subscriber terms of service then in effect. The Grantor reserves all rights under Applicable Law to adopt additional customer service standards that purport to apply to the Grantee, and the Grantee reserves all rights to challenge any such customer service standard that it believes is inconsistent with its contractual rights under this Agreement or Applicable Law, and all rights pursuant to Applicable Law to pass through the costs of complying with any such customer service standard to Subscribers.

A. Phone Service. The Grantee shall maintain a toll-free telephone number and a telephone service operated such that complaints and requests for repairs or adjustments may be received at any time.

B. Notification of Service Procedures. The Grantee shall furnish each Subscriber at the time service is installed, written instructions that clearly set forth information concerning the procedures for making inquiries or complaints, including the Grantee’s name, address and local telephone number. The Grantee shall give the Grantor thirty (30) days prior notice of any rate increases, or changes in programming services or Channel positions provided the change is within the control of the Grantee. Grantee shall endeavor to provide advance written notice to Grantor prior to changes in Channel positions that are not within its control, and in any event, shall provide such written notice to Grantor no later than thirty (30) days after such change in Channel positions have been made effective.

C. Continuity of Service. It shall be the right of all Subscribers to continue receiving Cable Service insofar as their financial and other obligations to the Grantee are honored, and subject to the Grantee’s rights under Section 15.1 of this Agreement.

9.2 Rate Regulation. Grantor shall have the right to exercise rate regulation to the extent authorized by law, or to refrain from exercising such regulation for any period of time, at the sole discretion of the Grantor. If and when exercising rate regulation, the Grantor shall abide by the terms and conditions set forth by the FCC or other Applicable Law.

SECTION 10
Franchise Fee

10.1 Amount of Fee. The Grantee shall pay to the Grantor an annual Franchise Fee in an amount equal to three percent (3%) of the annual Gross Revenue. Such payment shall be in addition to taxes of general applicability owed to the Grantor by the Grantee that are not included as franchise fees under federal law. Franchise Fees may but are not required to be passed through to Subscribers as a line item on Subscriber bills or otherwise as the Grantee chooses, consistent with Applicable Law. The Grantee shall not deduct from the Franchise Fee any items listed under Section 622(g)(2) of the Cable Act (47 U.S.C. 542(g)(2)). The Grantee reserves its right to offset from the Franchise Fee any payment made to the Grantor if permitted by Applicable Law and the Grantor reserves its right to challenge the legality of any such offset.

10.2 Payment of Fee. Payment of the Franchise Fee due the Grantor shall be made on a quarterly basis, within forty-five (45) days of the close of each calendar quarter, and transmitted by electronic funds transfer to a bank account designated by Grantor. The payment period and the collection of the Franchise Fees that are to be paid to the Grantor pursuant to this Agreement shall commence sixty (60) days after the Effective Date of this Agreement as set forth in Section 15.10. If any Franchise Fee payment or recomputed payment is not made on or before the dates specified herein, the Grantee shall pay an interest charge, computed from the last day of the fiscal year in which such payment was due, at the annual rate equal to the lowest of (A) the maximum rate permitted under State Applicable Law, (B) eight percent (8%) or (C) that established by the State Bank Commissioner pursuant to C.R.S. 39-21-110.5 in effect as of the due date (which is the prime rate of interest as reported by the Wall Street Journal on July 1st of the previous calendar year, plus three percent (3%), rounded to the nearest full percent). Upon receipt of a written request from the Grantor, the Grantee shall provide the Grantor a report showing the basis of any such Franchise Fee payment, including the applicable Gross Revenue.

10.3 Accord and Satisfaction. No acceptance of any payment by the Grantor shall be construed as a release or as an accord and satisfaction of any claim the Grantor may have for additional sums payable as a Franchise Fee under this Agreement.

10.4 Limitation on Recovery. The period of limitation for recovery of any Franchise Fee payable hereunder shall be three (3) years from the date on which payment by the Grantee was due; provided however that any review permitted under Section 10.5 may result in recovery even if the matter is not ultimately resolved for more than three (3) years from the date that the payment was due.

10.5 Review. All amounts paid by the Grantee to the Grantor under this Agreement and all records reasonably related to the administration or enforcement of this Agreement shall be subject to review and if justified, re-computation by the Grantor upon thirty (30) days written notice to Grantee. The Grantor shall specifically have the right to review relevant data related to the allocation of revenue to Cable Services in the event Grantee offers Cable Services bundled with non-Cable Services. For purposes of this section, “relevant data” shall include, at a minimum, Grantee’s records, produced and maintained in the ordinary course of business, showing the subscriber counts per package and the revenue allocation per package for each package that was available for Grantor subscribers during the review period. To the extent that the Grantor does not believe that the relevant data supplied is sufficient for the Grantor to complete its audit/review, the Grantor may require other relevant data. For purposes of this Section 10.5, the "other relevant data" shall generally mean all: (1) billing reports, (2) financial reports and (3) sample customer bills used by Grantee to determine Gross Revenue for the Service Area that would allow the City to re-compute the Gross Revenue determination.

If such review indicates an aggregate, undisputed error in payment of Franchise Fees or Access Capital Fees of five percent (5%) or more, then the Grantee will reimburse the cost of such review up to a maximum of five thousand dollars ($5,000); provided, however, that such review will be conducted no more frequently than once every three (3) years. If there is a dispute regarding a claimed underpayment, that if accurate, would result in an error in payment of Franchise Fees or Access Capital Fees of five percent (5%) or more, and if the dispute is ultimately resolved in favor of the Grantor, then at the time of such resolution, the Grantee will reimburse the cost of such review up to a maximum of five thousand dollars ($5,000).

SECTION 11
Transfer of Franchise

11.1 Franchise Transfer or Change of Control. This Agreement shall not be assigned, sold, or transferred other than by operation of law or to an Affiliate of the Grantee, nor shall control of the Agreement or of the Grantee be assumed by another party who is not an Affiliate of the Grantee, without the prior consent of the Grantor, such consent not to be unreasonably withheld or delayed. The word "control" as used herein is not limited to majority stockholders but includes actual working control in whatever manner exercised. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Agreement or Cable System to secure indebtedness.

11.2 Notification and Application to Grantor. In accordance with federal law, the Grantee and the transferee shall make a written request of the Grantor for its consent to any actual or proposed (a) assignment, sale or transfer of this Agreement other than by operation of law or to an Affiliate of the Grantee, or (b) change of control of this Agreement or of the Grantee to another party who is not an Affiliate of the Grantee. Such request shall be accompanied by all information required by federal law. Within thirty (30) days of receiving such a request, the Grantor shall notify the Grantee in writing of any additional information it reasonably requires to determine the legal, financial and technical qualifications of the transferee or any other information permitted by federal law. If the Grantor has not taken action on the Grantee's request for transfer within one hundred twenty (120) days after receiving such request, consent by the Grantor shall be deemed given, unless the Grantor and the Grantee have agreed to an extension of time.

SECTION 12
Records, Reports and Maps

12.1 Reports Required. The Grantee's schedule of charges for regular Subscriber service, its policy regarding the processing of Subscriber complaints, delinquent Subscriber disconnect and reconnect procedures and any other terms and conditions adopted as the Grantee's policy in connection with its Subscribers shall be filed with the Grantor upon request.

12.2 Records Required. The Grantee shall at all times maintain:

A. A record of all written complaints received regarding interruptions or degradation of Cable Service, which record shall be maintained for one (1) year.

B. A full and complete set of plans, records and strand maps showing the location of the Cable System.

C. All financial and accounting records necessary to demonstrate compliance with this Agreement, including, without limitation, all records necessary to conduct the Franchise Fee and financial review described in Section 10.5.

12.3 Inspection of Records. The Grantee shall permit any duly authorized representative of the Grantor, upon receipt of advance written notice, to examine during normal business hours and on a non-disruptive basis any of the Grantee's records maintained by the Grantee as is reasonably necessary to ensure the Grantee's compliance with this Agreement. Such notice shall specifically reference the subsection of the Agreement that is under review so that the Grantee may organize the necessary books and records for easy access by the Grantor. The Grantee shall not be required to maintain any books and records for compliance purposes longer than three (3) years, except for service complaints, which shall be kept for one (1) year as specified above or for pending financial audits/reviews under Section 10.5, which shall be kept until the audit/review is completed and all matters related thereto resolved. The Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act (47 U.S.C. § 551). The Grantor agrees to treat as confidential any books, records or maps that constitute proprietary or confidential information to the extent the Grantee makes the Grantor aware of such confidentiality. If the Grantor believes it must release any such confidential books or records in the course of enforcing this Agreement, or for any other reason, it shall advise the Grantee in advance so that the Grantee may take appropriate steps to protect its interests. If the Grantee requests that the Grantor continue to oppose such release, then until otherwise ordered by a court or agency of competent jurisdiction, the Grantor agrees that, to the extent permitted by State and federal law, it shall deny access to any of the Grantee's books and records marked confidential, as set forth above, to any Person, and the Grantee shall reimburse the Grantor for all reasonable costs and attorneys' fees incurred in any legal proceedings related to same. If the Grantee does not request that the Grantor oppose such release, then the Grantor shall make an independent judgment with respect to such release, and the Grantee shall not be liable for any costs related to same.

SECTION 13
Access

13.1 Access Channels.

A. Upon a mutually agreed upon date, but not less than two hundred seventy days (270) of a written request, the Grantee shall provide one (1) Access Channel on the Cable System in

High Definition ("HD") for use by the Grantor for Access programming. Grantor shall be responsible for any equipment costs and related costs associated with the transport of the video signal from the origination site to Grantor's headend/hub for distribution on the Access Channel.

B. The Grantor has the ability to produce and is producing its Access programming in HD. Grantor commits to produce at a minimum, the same amount of Access programming in HD for such Access Channel, as it produced for its Access Channel in 2022. All equipment necessary to produce and transmit any Access Channel programming in HD to Subscribers shall be at the Grantor's cost.

C. The Grantee shall work cooperatively with the Grantor to ensure the necessary Access transport equipment complies with Grantee's Cable System requirements. The Grantor shall be responsible for the costs to transport the signal and the costs of all transmission equipment, including HD modulator and demodulator, and encoder or decoder equipment, and multiplex equipment, required for the Grantee to receive and distribute the Grantor's HD Access Channel signal, including any resulting upgrades to any return line. However, the Grantor may use any unused, remaining portion of the Access Capital Grant under Section 13.5 to offset any related capital costs.

D. Grantee shall place the HD Access Channel on the Basic Cable Service tier.

E. Except as specifically otherwise provided in this Agreement, all equipment necessary to produce any Access Channel programming shall be at the Grantor's or a Designated Access Provider's cost.

13.2 Relocation of the Access Channel. The Grantee shall provide the Grantor and all Subscribers with as much prior written notice of any relocation of an Access Channel as reasonably possible, but in no event less than ninety (90) days. The Grantee shall notify its Subscribers of the relocation of the Access Channel in any manner it so chooses. The Grantee shall also provide the Grantor, upon written request from Grantor, with a payment of three thousand dollars ($3,000) to assist the Grantor in its outreach efforts to educate consumers of the relocation of the Access Channel. Grantee shall remit payment within fifteen (15) days of receipt of the request from Grantor.

13.3 Return Lines.

A. The Grantee has previously installed a Cable System return line from the location listed below to the Cable System headend:

Elks' Civic Building, 107 South Cascade Avenue

B. In the event that the Grantor determines during the term of this Agreement that the return line listed under subsection 13.3A needs to be relocated, or that an additional return line is required from a location other than listed under subsection 13.3A (each, a "New Return Line"), the Grantor may elect to have the Grantee construct and maintain such New Return Line at Grantor's expense between the relocated or new Access location and the Cable

System headend. If such New Return Line is to be provided by the Grantee, the Grantee shall select the materials and technology to be used for the New Return Line, provided that the New Return Line shall be able to send video programming signals from the Access location to the Cable System headend in the same format in which such signals are uploaded to the New Return Line and that such New Return Line is in compliance with all applicable FCC regulations. The Grantee shall complete any New Return Line requested pursuant to this subsection within one year of receiving a written request for same from the Grantor or as otherwise agreed upon by the Grantee and the Grantor. All commercially reasonable costs associated with the construction and maintenance of and transport of PEG programming over any New Return Line, including applicable equipment, shall be the responsibility of the Grantor. However, the Grantor may use any unused, remaining portion of the Access Capital Grant under Section 13.5 to offset any related capital costs.

13.4 Technical Quality. The Grantee shall maintain the Access Channel and return lines, including any New Return Line, in compliance with FCC regulations regarding signal quality. With respect to signal quality, the Grantee shall not be required to carry the Access Channel in a higher quality format than that delivered to the Grantee, but the Grantee shall distribute the Access Channel in accordance with FCC technical standards.

13.5 Access Capital Grant.

A. The Grantor may require the Grantee to provide a capital grant to be used by the Grantor to purchase Access related equipment and/or as in-kind capital funds to offset the capital costs of Access operations, with the aggregate cost of such capital not being greater than fifteen thousand dollars ($15,000) (the "Access Capital Grant"). The Grantee shall provide any portion of the Access Capital Grant to be used for purchasing Access related equipment to the Grantor within ninety (90) days of the Grantee's receipt of the request from the Grantor. The Grantor shall promptly provide the Grantee with receipts supporting its use of the Access Capital Grant to purchase any Access related equipment within forty-five (45) days of such purchase or to demonstrate other uses of the Access Capital Grant as permitted by this Agreement and Applicable Law. All requests by Grantor for payment of the Access Capital Grant made in accordance with this section must be made to Grantee within the first five (5) years of the Effective Date of this Agreement.

B. The Grantor shall be responsible for purchasing, installing, operating, maintaining and replacing all capital equipment purchased with the Access Capital Grant; provided, however, that the Grantee shall construct and own any equipment associated with the Return Line, and maintain the Return Line in accordance with Section 13.4.

C. The Grantor understands that pursuant to federal law, the Grantee may, but is not required to, collect the Access Capital Grant from Subscribers as a separate line item on Subscriber bills, in addition to the price for Cable Service.

13.6 Access Channel Restrictions. To the extent permitted by Applicable Law, and without waiving any protections of the Colorado Governmental Immunity Act or any other provisions of Applicable Law, the Grantor is responsible to the Grantee for any damages caused by Grantor of a designated access provider resulting from the Grantor's use of the aforementioned Access Channels whether Grantor operates the Access Channels from Grantor's facilities or a third party's facilities. Grantee shall not be responsible for operating and managing the Access Channels including approving any PEG programming. Grantor reserves the right to permit a third party to operate and manage the PEG Channel on the Grantor's behalf or for obtaining releases from programmers for any PEG programming. The Access Channels shall not be used for commercial purposes, including but not limited to advertising or leased access. Grantor agrees to notify any Person using Access Channels of these non-commercial use requirements, but shall not be responsible for any individual's exercise of free speech.

SECTION 14
Enforcement or Revocation

14.1 Notice of Violation. If the Grantor believes that the Grantee has not complied with the terms of this Agreement, the Grantor shall first informally discuss the matter with the Grantee. If these discussions do not lead to resolution of the problem, the Grantor shall notify the Grantee in writing of the exact nature of the alleged noncompliance (the "Violation Notice").

14.2 Grantee's Right to Cure or Respond. The Grantee shall have thirty (30) days from receipt of the Violation Notice to (A) respond to the Grantor, contesting the assertion of noncompliance, (B) to cure such default, or (C) if, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the Grantor of the steps being taken and the projected date that they will be completed. If (i) the Grantee fails to respond to the Violation Notice received from the Grantor, (ii) the Grantee responds to the Grantor, contesting the assertion of the noncompliance, but the Grantor disagrees with the Grantee's response, or (iii) if the default is not remedied within the thirty (30) day cure period set forth above, the Grantor may pursue any remedies available to it under Applicable Law; provided, that the Grantor shall not conduct an administrative proceeding or hearing. The Grantee reserves all legal and equitable rights under Applicable Law to challenge or appeal any action by the Grantor with respect to an alleged violation of this Agreement.

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

SECTION 15
Miscellaneous Provisions

15.1 Force Majeure. The Grantee shall not be held in default under, or in noncompliance with the provisions of this Agreement, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control. This provision includes, but is not limited to, severe or unusual weather conditions, fire, flood, or other acts of God, strikes, work delays caused by failure of utility providers to service, maintain or monitor their utility poles to which the Grantee's Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

15.2 Minor Violations. Furthermore, the parties hereby agree that it is not the Grantor's intention to subject the Grantee to penalties, fines, forfeitures or revocation of this Agreement for violations of this Agreement where the violation was a good faith error that resulted in no or minimal negative impact on the Subscribers within the Service Area, or where strict performance would result in practical difficulties and hardship to the Grantee which outweighs the benefit to be derived by the Grantor and/or Subscribers.

15.3 Action of Parties. In any action by the Grantor or the Grantee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

15.4 Equal Protection. No Cable Operator shall be permitted to locate a Cable System in the Streets in order to provide Cable Service in the Service Area without a Franchise. The Grantee acknowledges and agrees that the Grantor reserves the right to grant one (1) or more additional Franchises or other similar lawful authorization to utilize the Streets to provide Cable Services within the Service Area. If the Grantor grants such an additional Franchise or other similar lawful authorization containing material terms and conditions that differ from the Grantee's material obligations under this Agreement, then the Grantor agrees that the obligations in this Agreement will, pursuant to the process set forth in this section, be amended to include any material terms or conditions that it imposes upon the new entrant, or provide relief from existing material terms or conditions, so as to insure that the regulatory and financial burdens on each entity are materially equivalent. "Material terms and conditions" include, but are not limited to: the Franchise Fee; Gross Revenue definition; insurance; Cable System build-out requirements; security instruments; the Access Channel and the Access Capital Grant; customer service standards; required reports and related record keeping; level playing field (or its equivalent); audits; dispute resolution; remedies; and notice and opportunity to cure breaches. The parties agree that this provision shall not require word for word identical Franchise provisions so long as the regulatory and financial burdens on each entity are materially equivalent.

A. The modification process of this Agreement as provided for in this section shall only be initiated by written notice by the Grantee to the Grantor regarding specified obligations. The Grantee's notice shall address the following: (1) identifying the specific terms or conditions in the competitive Franchise which are materially different from the Grantee's obligations under this Agreement; (2) identifying the Agreement terms and conditions for which the Grantee is seeking amendments; (3) providing text for any proposed Agreement amendments to the Grantor, with a written explanation of why the proposed amendments are necessary and consistent.

B. Upon receipt of the Grantee's written notice as provided in subsection 15.4A, the Grantor and the Grantee agree that they will use best efforts in good faith to negotiate the Grantee's proposed Agreement modifications, and that such negotiation will proceed and conclude within a ninety (90) day time period, unless that time period is reduced or extended by mutual agreement of the parties. If the Grantor and the Grantee reach agreement on the Agreement modifications pursuant to such negotiations, then the Grantor shall amend this Agreement to include the modifications.

C. If the parties fail to reach agreement in the negotiations as provided for in subsection 15.4B, the Grantee may, at its option, elect to replace this Agreement by opting into the Franchise or other similar lawful authorization to use the Streets in order to provide Cable Service that the Grantor grants to another provider of Cable Services, so as to ensure that the regulatory and financial burdens on each entity are equivalent. If the Grantee so elects, the Grantor shall immediately commence proceedings to replace this Agreement with the Franchise issued to the other Cable Services provider.

D. Nothing in this section shall be deemed a waiver of any remedies available to the Grantee under Applicable Law, including but not limited to Section 625 of the Cable Act (47 U.S.C. § 545).

E. Should the Grantee seek an amendment to this Agreement or a replacement Franchise pursuant to this section, while the parties shall pursue the adoption of such amendments or replacement Franchise pursuant to subsections 15.4A through D, any such amendments or replacement Franchise shall not become effective unless and until the new entrant makes Cable Services available for purchase by Subscribers or customers under its agreement with the Grantor.

15.5 Notices. Unless otherwise provided by Applicable Law, all notices, reports or demands pursuant to this Agreement shall be in writing and shall be deemed to be sufficiently given upon delivery to the Persons at the respective addresses set forth below by hand delivery, by U.S. certified mail, return receipt requested, or by nationally or internationally recognized courier service such as Federal Express. The Grantee shall provide thirty (30) days' written notice of any changes in rates, programming services or Channel positions using any reasonable written means, including e-mail. Either party may notify the other from time to time of the email address at which that party wishes to receive notices electronically.

If to Grantor: City of Montrose, Colorado
Attn: City Manager
P.O. Box 790
Montrose, CO 81402-0790

with a copy to: City of Montrose, Colorado
Attn: City Attorney
P.O. Box 790
Montrose, CO 81402-0790

If to Grantee: Spectrum Pacific West, LLC
Attn: Government Affairs

6399 S. Fiddler's Green Circle, Sixth Floor
Greenwood Village, CO 80111

With a copy to: Charter Communications
Attn: Vice President of Government Affairs
601 Massachusetts Ave. NW, Suite 400W
Washington, DC 20001

15.6 **Public Notice**. Minimum public notice of (A) any public hearings relating to this Agreement or (B) any grant of a Franchise by the Grantor to any other Person(s) to provide Cable Services utilizing any system or technology requiring use of the Streets, shall be as provided by Applicable Law unless a longer period is otherwise specifically set forth in this Agreement. Grantor shall utilize best efforts to provide written notice to the Grantee within thirty (30) days of Grantor's receipt from any other Person(s) of an application or request for a Franchise(s) to provide Cable Services utilizing any system or technology requiring use of the Streets. Notwithstanding the foregoing, it shall not be a violation of the Grantor's obligations under this Franchise if a failure to provide such notice is unintentional.

15.7 **Reservation of Rights**. Each party reserves its rights to enforce provisions of Applicable Law to the rights, duties and obligations of this Franchise, as they may change in the future. Further, each party reserves its rights to challenge the applicability to any future changes in the law to the rights, duties and obligations of this Franchise.

15.8 **Severability**. If any section, subsection, sentence, clause, phrase, or portion of this Agreement is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Agreement.

15.9 **Entire Agreement**. This Agreement and any Exhibits hereto constitute the entire agreement between the Grantee and the Grantor and supersede all prior or contemporaneous agreements, representations or understandings (whether written or oral) of the parties regarding the subject matter hereof.

15.10 **Administration of Franchise**. This Agreement is a contract and neither party may take any unilateral action that materially changes the explicit mutual promises and covenants contained herein. Any changes, modifications or amendments to this Agreement must be made in writing, signed by the Grantor and the Grantee.

15.11 **Effective Date**. This Agreement will take effect and be in full force from such date of acceptance by the Grantee recorded on the signature page of this Agreement (the "Effective Date").

15.12 **Publication Costs.** This Agreement shall be published in accordance with Applicable Law. The Grantee shall reimburse the Grantor for all costs incurred in publishing this Agreement and any notices or ordinances in connection with its adoption if such publication is required by Applicable Law.

15.13 Venue and Jurisdiction. The parties agree that any action arising out of this Agreement will be brought in the district court of Montrose County or federal courts located in the State of Colorado, irrevocably submit to the exclusive jurisdiction of any such court and, except for removal to federal court, waive any objection that such party may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agree not to plead or claim the same.

Considered and approved this ___ day of ________________, 2023.

GRANTOR:

City of Montrose, Colorado

Signature: ______________________________
Print Name: ______________________________
Title: ______________________________

Accepted this ___ day of ________________ 2023.

GRANTEE:

Spectrum Pacific West, LLC By
Charter Communications, Inc., Its
Manager

Signature: ________________________________

Name/Title: ________________________________

EXHIBIT A
Complementary Service Locations

City Hall (Main Lobby) - 400 E Main Street
City Hall (IT Meeting Room) - 400 E Main Street
Public Safety Complex - 434 S First Street
Elks Civic Building - 107 S Cascade Avenue
Montrose Pavilion - 800 Pavilion Drive

City of Montrose

City Charter Discussion

Franchises, Public Utilities, and Contracts
(Article IV of the City Charter)
Overview of Suggested Changes

- A number of changes were suggested by the City's expert in franchise law, which are summarized below:
  - Removal of the requirement for an election to grant or renew a franchise. The suggestion is to approve these by ordinance. This is in conformity with federal law/case law as to CATV.
    - Also removes the election requirement for situations where a utility provider wishes to sell, lease or assign its franchise to another entity. Council could approve these transfers by ordinance also.

Article IV Changes, Continued…

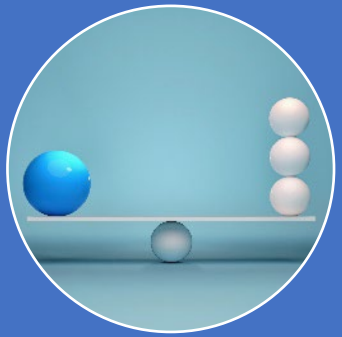
- Several changes to reflect that franchises must comply with applicable law (usually this means Federal law).
- Outdated provisions or those the expert felt were not beneficial are recommended for deletion.
- A typo regarding "City Manager" was removed from section 16, second paragraph.
- Penalty provisions were removed – much the same as what we have been doing in the Code. These are codified in one place for simplicity. Also, penalties for a franchise should be referenced in the agreement itself, not the Charter.
- The words "utility" and "public utility" were clarified throughout.

- The City staff suggested we add some language related to railroads. Please note this should not be retroactive to existing tracks.

Overarching Philosophy for Amendments

Three Options:

Minimal Changes



Balanced

Maximal Changes

Overall Timeline:

- August, 2023: Charter Committee will meet to separate all suggested changes into two groups – an "easy" group and a "hard" group for discussion with the rest of City Council
- September 5, 2023: Council meeting where Committee presents the "easy" suggestions for discussion
- October 16, 2023: City Council looks at other changes that present more difficult choices or appear to be more political
- November 6, 2023: Overflow – meeting of Council to discuss any remaining outstanding matters related to this project
- February 7th, 2024: This is the first City Council Meeting in February, where the Council would authorize the ballot language to be sent to the County
  - Council would pass language by ordinance saying what the People would be voting upon in the election.
- April 2024: Election

Term Limits
Multiple Choice Options:

- Do we continue to have 4 district seats and 1 at-large seat?

If yes, then:

- Length of term for each district seat (2 or 4 yrs or other)
- Length of term for at-large seat

Term Limits, Continued …

- **How many terms should be allowed?**
- **Does a partial term count toward maximum?**
  - **Only counts if more than half the total length of term is served? (Less than half a term doesn't count.)**
- **Should there be some kind of maximum number of years instead of maximum number of terms?**
- **How much time before can run again after hitting whatever the maximum is set to be?**

New Utilities

- Our research indicates a vote of the people would be required for creation or acquisition of a new public utility owned by the City – with the exception of "waterworks." *See*, C.R.S. § 31-15-707 (1)(a)(I).

- Because the Colorado Legislature found this to be a matter of statewide (or mixed) concern, we believe the City is preempted by the State from changing this through our Charter or otherwise, even though we have home rule status.

<<Excerpt from City Charter, City of Montrose>>

ARTICLE IV. - FRANCHISES, PUBLIC UTILITIES AND CONTRACTS

Sec. 1. - Grant.

~~No franchise to construct and operate a public utility in any street, avenue, alley, or public place of the said City shall be granted except upon the majority vote of the electors of said City voting at such election. Notwithstanding the foregoing, and pursuant to federal law, no election shall be required to authorize the use of public rights of way for cable television franchises, which shall be approved by a majority vote of the City Council. The question of its being granted shall be submitted to such vote only upon deposit with the City Council of the expense (to be estimated by the City Council) of such submission, by the applicant for said franchise.~~

~~(Res. No. 2014-06 , 1(Att.), 2-4-2014)~~

The City Council may grant new franchises, or renew existing franchises for utility purposes by ordinance.

Sec. 2. - Limitations.

The granting of franchises by the City shall be limited only by the provisions of the Constitution and applicable statutes of the State of Colorado or of the United States as now in effect or as hereafter amended or enacted~~, and shall be submitted to the vote of the electors when required by Constitutional provision and not preempted by federal law~~.

~~(Res. No. 2014-06 , 1(Att.), 2-4-2014)~~

Sec. 3. - No exclusive grant.

No franchise or privilege shall be granted for a longer period than 20 years. No exclusive franchise or renewal shall ever be granted~~-~~.

Sec. 4. - No assignment.

~~Except for cable television franchises, Nno franchise or privilege granted by the City shall ever be leased, assigned or transferred except by majority vote of the electors voting on the question, to be submitted to a general or special municipal election thereon, at the expense of the owners, to be deposited as in Section 1 [of this article].~~

No franchise granted by the City shall ever be leased, assigned or transferred without permission of a majority of the City Council.

~~(Res. No. 2014-06 , 1(Att.), 2-4-2014)~~

Sec. 5. - Conditions.

All franchises or privileges hereafter granted to construct and operate a ~~public~~ utility shall, unless preempted by federal or state law, prescribe the kind of quality of service or product to be furnished, ~~the maximum rate or rates to be charged therefor, shall specify whether the authorization granted covers all streets, avenues, alleys, or public grounds, or some limited parts of the Citythe same shall apply,~~ and the manner in which the streets, avenues, alleys and public grounds shall be used and occupied, and any other terms and conditions conducive to the public interest, except as otherwise regulated by ~~the~~ law~~s of the State of Colorado~~.

Sec. 6. - Termination.

Unless otherwise preempted by federal or state law, ~~A~~all such grants and renewals thereof shall reserve to the City the right to terminate the same and to purchase all the property of the utility in the streets, avenues, alleys and public places in the City and elsewhere, as may be provided in the franchise making the grant or renewal, used in or useful for the operation of the utility at the price fixed in the franchise. Nothing in such franchise shall prevent the City from acquiring the property of any such utility by condemnation proceedings or in any other lawful mode; but all such methods of acquisition shall be alternative to the power of purchase, reserved in the franchise or renewal as herein before provided. Upon the acquisition by the City of the property of any utility, by purchase, condemnation, or otherwise, such franchise or renewals shall at once terminate.

Sec. 7. - Purchase price.

Unless otherwise preempted by federal or state law, ~~N~~no franchise making such grant or renewal shall be valid unless it shall expressly provide therein a method for ascertaining the price to be paid by the City for the property that may be acquired by it from such utility, by purchase, condemnation or otherwise, and such price shall exclude all value of such grant or renewal.

Sec. 8. - ~~Extensions~~Reserved.

~~The City may, as provided in Section 1 [of this article], grant to any individual, company or corporation operating a public utility, the right to extend the appliances and service of such utility. All such extensions shall become a part of the aggregate property of the utility, and shall be subject to all the obligations and reserved rights in favor of the City Applicable to the property of the utility by virtue of the franchise providing for its construction and operation. The right to use and maintain any such extension shall expire with the original franchise of the utility to which the extension was made or any renewal thereof.~~

Sec. 9. - Consents.

No consent of the owner of property abutting on any highway or public ground shall be required for the construction, extension, maintenance or operation, of any utility or by original grant or renewal, unless such utility is of such a character that its construction operation is an additional burden upon the rights of such property owner in such highways or public grounds.

Sec. 10. - Right to insert additional matter.

The enumeration and specification of particular matters in this Charter which must be included in every franchise or grant, shall never be constructed as impairing the right of the City to insert in such franchise or grant, such other and further conditions, covenants, terms, restrictions, limitations, burdens, taxes, assessments, rates, fares, rental, charges, control, forfeitures, or any other provisions whatever, consistent with applicable law, and as the City shall deem proper to protect the interests of the people.

Sec. 11. - Regulations.

The City Council shall at all times control the distribution of space, in, over, under and across all streets or public grounds occupied by public utility fixtures. All rights granted for the construction and operation of utilities shall be subject to the continuing right of the City Council to require such reconstruction, relocation, change, or discontinuance of the appliances used by the utility in the streets, avenues, alleys and public places of the City, as shall in the opinion of the City Council be necessary in the public interest.

Sec. 12. - Power to regulate rates and fares.

To the extent ~~permitted~~ not preempted by applicable law, ~~A~~all power to regulate the rates, fares, rentals and charges for service by public utility corporations is hereby reserved to the people to be exercised by them by the ordinance of the City Council, or in the manner herein provided for initiating or referring an ordinance. Any right of regulation shall further include the right to require uniform, convenient and adequate service to the public and reasonable extensions of such service and of such public utility works. The granting of a franchise shall not be deemed to confer any right to include in the charge for service any return upon the value of the franchise or grant itself.

Sec. 13. - Ordinance in plain terms.

No franchise, right, privilege, or license shall be considered as granted by any ordinance except when granted therein in plain and unambiguous terms, and any and every ambiguity therein shall be construed in favor of the City and against the claimant under said ordinance.

~~Sec~~. 14. - ~~Street sprinkling, cleaning and paving~~Reserved.

~~Every grant of any franchise or privilege in, over, under or along any street, avenue, alley or public place in the City shall be subject to the conditions that the person, firm or corporation exercising or enjoying the same shall, unless otherwise provided by ordinance, sprinkle, clean, keep in repair, and pave and repave so much of said street, highway, or other public place as is occupied by such franchise holder.~~

Sec. 15. - Franchise provided for safety, etc.

The grant of every franchise or privilege shall be subject to the right of the City, whether in terms reserved or not, to make any regulations for the safety, welfare and accommodation of the public, including among other things, the right to require proper and adequate extensions of the service of such grant, the right to require any or all wire, cable conduits, and other appliances, to be placed underground, and the right to protect the public from danger or inconvenience in the operation of any work or business authorized by the grant of the franchise.

Sec. 16. - City maintains general supervision, reports, and inspection.

The City shall maintain general supervision and police control over all utility companies insofar as they are subject to municipal control. It shall cause to be instituted such actions or proceedings as may be necessary to prosecute utility companies for violation of law.

It shall require every person or corporation operating under a franchise or grant from the City, to submit to the City Council a report of such information as they shall specify at any time and within a time specified by City Council, verified by the oath of the president, the Treasurer, or the ~~City Manager~~ manager thereof.

Such reports shall be in the form, contain such detailed information, and cover the period prescribed by the City Council by ordinance or in the franchise agreement; and the City Council shall have the power, either through its members or by experts or employees duly authorized by it, to examine the books and affairs of any such person, persons or corporation, and to compel the production before them of books and papers pertaining to such report or other matters.

~~Any person, persons, or corporation who shall fail to make any such report shall be liable to a penalty of $1,000.00 and an additional penalty of $1,000.00 for each and every day thereafter during which he or it shall fail to file such report, to be sued for and recovered in any court of record having jurisdiction.~~

~~(Res. No. 2014-06 , 1(Att.), 2-4-2014)~~

~~**Editor's note—** Res. No. 2014-06 , 1(Att.), adopted Feb. 4, 2014, amended § 16 and in doing so changed the title of said as set out herein.~~

Sec. 17. - Existing franchises.

All franchise ordinances of the City in effect at the time that this Charter is adopted shall remain in full force and effect according to their provisions and terms until the expiration date provided in such ordinance.

Sec. 18. - Franchise records.

The Council shall cause to be kept in the office of the City Clerk an indexed franchise record in which shall be transcribed copies of all public utility franchises heretofore and hereafter granted. The index shall give the name of the grantee and any assignees. The record shall be a complete history of all such franchises and shall include a comprehensive and convenient reference to all actions of law affecting the same, and copies of all annual reports, and such other matters of information and public interest as the Council may from time to time require.

Sec. 19. - Water rights.

The City shall have the power to own and control water rights and to exchange water rights owned by it for water rights from any source and to purchase, obtain or acquire water and water rights from any source including such existing water rights as may be used upon any land which is annexed to the City from time to time, together with the right to sell or lease water rights.

Sec. 20. - Rates.

The Council shall by ordinance establish rates for services provided by City-owned utilities.

Sec. 21. - Revocable license.

After a public hearing, Council by ordinance may grant a license, revocable for cause, to lay sidetracks and switches along, or across any public thoroughfare, in accordance with standards and procedures to be adopted by Council.

Sec. 22. - Revocable permits.

Council may grant permits for the temporary use or occupation of any street, alley or public place. Such permits shall be revocable by Council at any time whether or not the right is expressly reserved in the permit.

Sec. 23. - Books of account.

The City, when owning any utility, shall keep the books of account for such utility distinct from other City accounts and such manner to show the true and complete financial result of such City ownership, or ownership and operation, as the case may be. Such accounts shall be so kept as to show the actual cost to the City of the utility owned; all costs of maintenance, extension and improvements, all operating expenses of every description, in case of such City operation; if water or other service shall be furnished for the use of any department of the City without charge, the accounts shall show as nearly as possible, the value of such service; such accounts shall also show reasonable allowance for interest, depreciation and insurance, and also estimates of the amount of taxes that would be chargeable against such property if owned by a private corporation. The City Council shall cause to be printed annually for distribution, a report showing the financial results, in form as aforesaid, of such City ownership, or ownership and operation.

Sec. 24. – Railroads.

The Council, upon some fair apportionment of the cost thereof between the railroad and the city and/or other public authority in interest, may by ordinance require any railroad company to elevate or lower any of its tracks running over, along, or across any street or alley of the city, or to take such other measures for the protection of the public, as in the opinion of the Council the public safety or convenience may require. Every grant of any franchise or privilege in, over, under, or along any of the streets or public places in the city for railway purposes, shall be subject to the conditions that the person, firm, or corporation exercising or enjoying the same shall, unless otherwise provided by ordinance, clean, keep in repair, and pave and repave so much of a street or other public place occupied by a railway track as lies between its rails, and between the lines of double track, and for such space outside of said track as may have been acquired by franchise.

CITY OF MONTROSE
CITY CLERK

MEMO

DATE: July 27, 2023
TO: City Council
FROM: City Clerk Lisa DelPiccolo and City Attorney Ben Morris
RE: House Bill 23-1245 Regarding Campaign Finance

House Bill 23-1245 becomes effective January 1, 2024. This Bill amends campaign finance laws for municipal elections as outlined below.

- Aggregate Contribution Limits: House Bill 23-1245 caps aggregate contributions from any one person or political party at $400, and caps aggregate contributions from small donor committees at $4,000.

- Reporting Requirements: For municipalities with populations over 1,000, candidates are now required to file contribution and expenditure reports 60 days, 30 days, and 15 days before an election, as well as 30 days after. Annual reports are also required for committees that remain active.

  Previously, candidates were required to file 21 days before the election, the Friday prior to Election Day, and 30 days after the election. Annual reports were also required for committees that remain active.

- Retention Requirements: Reports must be kept for 10 years from the date of filing, and for 6 years after a successful candidate leaves office.

Home rule municipalities can operate under the existing statutes, set their own policies and procedures, or opt to have no requirements.

It is important to note that under current statutes, complaints are filed with the municipal clerk who determines whether the complaint has merit. CML recommends adoption of a formal violation complaint process.

In order to formalize our processes before the 2024 election process begins, we are respectfully requesting direction from City Council on this issue.

Stay here. Play everywhere.
MONTROSE COLORADO