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

2.1. *Grant of Authority*: Subject to the terms and conditions of this Agreement and the Communications Ordinance, the Board hereby grants the Franchisee the right to own, construct, operate and maintain the Cable System in the Public Rights-of-Way within the Franchise Area, for the sole purpose of providing Cable Service. This franchise grants no authority for Franchisee to use the County's Public Rights-of-Way for any other purpose unless otherwise expressly provided herein. However, nothing in this Agreement shall be construed to prohibit Franchisee from offering any service over the Cable System that is not prohibited by Federal or State law provided any requirements for County authorization or registration not inconsistent with federal and state law are satisfied. The Board makes no representation or guarantee that its interest in or right to control any Public Right-of-Way is sufficient to permit Franchisee's use, and Franchisee shall gain only those rights to use that are within the Board's power to convey. No privilege or power of eminent domain is bestowed by this grant; nor is such a privilege or power bestowed by this Agreement.

2.2. *County's Regulatory Authority*: The parties recognize that Franchisee's FTTP Network is being constructed and will be operated and maintained as an upgrade to and/or extension of its existing Telecommunications Facilities for the provision of Non-Cable Services. The jurisdiction of the County over such Telecommunications Facilities is restricted by federal and state law, and the County does not assert jurisdiction over Franchisee's FTTP Network in contravention of those limitations. Therefore, the County's regulatory authority under Title VI of the Communications Act is not applicable to the construction, installation, maintenance or operation of the Franchisee's FTTP Network to the extent the FTTP Network is constructed, installed, maintained or operated for the purpose of upgrading and/or extending the Franchisee's existing Telecommunications Facilities for the provision of Non-Cable Services. Due to the nature of the Franchisee's FTTP Network, the County and the Franchisee recognize and agree that sections 9.1-5-5, 9.1-5-6, 9.1-5-7, 9.1-7-4(a)-(c), 9.1-7-4(e), 9.1-7-7, 9.1-7-8, and Article 8 (in its entirety) of the Communications Ordinance are not applicable to the Franchisee.

2.3. *Term:* This Franchise shall become effective on October 1, 2005 (the "Effective Date"). The term of this Franchise shall be fifteen (15) years from the Effective Date unless the Franchise is earlier revoked or its term shortened as provided herein, or unless the Franchise is renewed or extended by mutual agreement.

2.4. *Grant Not Exclusive*: The Franchise and the right it grants to use and occupy the Public Rights-of-Way to provide Cable Services shall not be exclusive, and the Board reserves the right to grant other franchises for similar uses or for other uses of the Public Rights-of-Way, or any portions thereof, to any Person, or to make any such use itself, at any time during the term of this Franchise. Any such rights which are granted shall not be inconsistent with the rights granted under this Franchise or the Franchisee's rights under state law with respect to its telecommunications network.

2.5. *Franchise Subject to State and Federal Law*:

2.5.1. Notwithstanding any provision to the contrary herein, this Franchise is subject to and shall be governed by all applicable provisions of state and federal law, including but not limited to the Communications Act.

2.5.2. Should any change to state and federal law after the Effective Date have the lawful effect of materially altering the terms and conditions of this Franchise to the detriment of one or both parties, then the parties shall modify this Franchise to ameliorate such adverse effects on and preserve the affected benefits of the Franchisee and/or the County to the extent possible which is not inconsistent with the change in law. If the parties cannot reach agreement on the above-referenced modification to the Franchise, then, at either party's option, the parties agree to submit the matter to mediation. In the event mediation does not result in an agreement, then, at either party's option, the parties agree to submit the matter to non-binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association. The non-binding arbitration and mediation shall take place in the County, unless the parties' representatives agree otherwise. In any negotiations, mediation, and arbitration under this provision, the parties will be guided by the purpose as set forth below. In reviewing the claims of the parties, the mediators and arbitrators shall be guided by the purpose of the parties in submitting the matter for guidance. The parties agree that their purpose is to modify the Franchise so as to preserve intact, to the greatest extent possible, the benefits that each party has bargained for in entering into this Agreement and ameliorate the adverse affects of the change of law in a manner not inconsistent with the change in law. Should the parties not reach agreement, including not mutually agreeing to accept the guidance of the mediator or arbitrator, this subsection 2.5.2 shall have no further force or effect.

2.6. *No Waiver*:

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

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

2.6.3. Neither this Franchise nor any action by the County hereunder shall constitute a waiver of or a bar to the exercise of any police right or power of the County, including without limitation, the right of eminent domain. This Agreement shall not limit any authority of the County in accordance with Virginia law to condemn, in whole or in part, any property of the Franchisee, provided that the Franchisee shall receive whatever condemnation award the Franchisee would normally be entitled to recover as a matter of Virginia law. Partial condemnation of the Franchisee's property shall not terminate this Agreement except in accordance with the terms of this Agreement.

2.7. *Construction of Agreement*:

2.7.1. By accepting the Franchise and executing this Agreement, Franchisee, relying upon its own investigation and understanding of the power and authority of the Board to grant this Franchise accepts and agrees to comply with this Agreement and the Communications Ordinance, to the extent not contrary to federal and state law. However, and subject to subsection 2.8, in the event of a conflict between the Communications Ordinance and this Agreement, this Agreement shall prevail.

2.7.2. Nothing herein shall be construed to limit the scope or applicability of Section 625 Communications Act, 47 U.S.C. § 545.

2.8. *Police Powers*:

2.8.1. Nothing in this Agreement shall preclude the County from exercising its police powers to enact, amend or supplement any law or regulation governing cable communications within the County.

2.8.2. If the reasonable, necessary and lawful exercise of the County's police power as referenced in subsection 2.8.1 results in any material alteration of the terms and conditions of this Franchise, then the parties shall modify this Franchise to ameliorate the adverse effects on the Franchisee of the material alteration. If the parties cannot reach agreement on the above-referenced modification to the Franchise, then, at either party's option, the parties agree to submit the matter to mediation in accordance with the purpose set out in subsection 2.5.2 as it would pertain to ameliorating the adverse effects on the Franchisee. In the event mediation does not result in an agreement, then, at either party's option, the parties agree to submit the matter to non-binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association and the purpose set forth in subsection 2.5.2 as it would pertain to ameliorating the adverse effects on the Franchisee. The arbitration and mediation shall take place in the County, unless the parties' representatives agree otherwise. If both parties are not willing to agree to the arbitrator's decision, then the Franchisee may terminate this Agreement. Should the parties not reach agreement, including not mutually agreeing to accept the guidance of the arbitrator, this subsection 2.8.2 shall, except to the extent of the additional termination right of the Franchisee set forth in this subsection 2.8.2, have no further force or effect.

2.9. *Effect of Acceptance:* By accepting the Franchise and executing this Agreement, Franchisee, relying upon its own investigation and understanding of the power and authority of the Board to grant this Franchise, acknowledges and accepts the Board's legal right to grant the Franchise, to enter into this Agreement, and to enact and enforce ordinances and regulations related to the Franchise subject to the provisions of this Agreement; agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable law; and agrees that the Board retains the absolute right to terminate this Agreement for any material violation by Franchisee pursuant to Article 13 of this Agreement.

2.10. *Acceptance Fee:* As additional consideration supporting this Agreement, Franchisee shall pay to the County, at the time of tendering the Acceptance attached as Exhibit

H, an acceptance fee of seventy-five thousand dollars ($75,000) for each of the three Franchise Areas encompassed by this Agreement, for a total of two hundred twenty-five thousand dollars ($225,000).