

**RESOLUTION NO. 3144**

**A RESOLUTION OF THE CITY OF SALISBURY AUTHORIZING EXECUTION OF A CABLE FRANCHISE AGREEMENT BETWEEN THE CITY OF SALISBURY AND SHENANDOAH CABLE TELEVISION, LLC.**

**WHEREAS**, pursuant to the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, the Telecommunications Act of 1996 and any future amendments thereto (hereinafter collectively referred to as the "Cable Act"), the regulations of the Federal Communications Commission (hereinafter referred to as the "FCC") and Maryland law, the City is authorized to grant and renew franchises to construct, operate and maintain a cable system utilizing rights-of-way and properties within the City's jurisdiction; and

**WHEREAS**, the City adopted and subsequently amended a Cable Television Franchise Ordinance ("hereinafter referred to as the Ordinance"), codified at Chapter 5.22 of the City's Code of Ordinances, which further authorizes the City to grant and renew franchises to construct, operate, and maintain a cable system utilizing Rights-of-Way and properties within the City's jurisdiction; and

**WHEREAS**, Shentel currently holds a cable franchise from the City by virtue of a Cable Television Franchise Agreement with an effective date of January 10, 2022, and such franchise shall expire on January 10, 2032; and

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

**WHEREAS**, the City performed a cable ascertainment review, including identifying the City's future cable-related community needs; and

**WHEREAS**, the City has determined that Shentel has the financial, legal, and technical ability to provide cable services to subscribers located in the City; and

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

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

**WHEREAS**, by this Resolution, the Council **(i)** hereby approves the Cable Franchise Agreement (attached hereto and incorporated herein as **Exhibit A**) and **(ii)** hereby authorizes the Mayor's execution thereof on behalf of the City; and,

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SALISBURY, MARYLAND**, as follows:

**Section 1.** The Mayor is hereby authorized to execute, on behalf of the City of Salisbury, that certain Cable Franchise Agreement between the City of Salisbury and Shenandoah Cable Television, LLC, attached hereto and incorporated herein as **Exhibit A**.

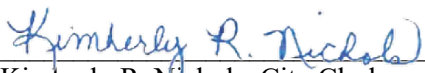
**Section 2.** It is the intention of the Mayor and Council of the City of Salisbury that each provision of this Resolution shall be deemed independent of all other provisions herein.


**Section 3.** It is further the intention of the Mayor and Council of the City of Salisbury that if any section, paragraph, subsection, clause or provision of this Resolution shall be adjudged invalid, unconstitutional or otherwise unenforceable under applicable Maryland or federal law, such adjudication shall apply only to the section, paragraph, subsection, clause or provision so adjudged and all other provisions of this Resolution shall remain and shall be deemed valid and enforceable.

**Section 4.** The recitals set forth hereinabove and **Exhibit A** attached hereto, and all exhibits attached thereto and incorporated therein, are incorporated into this section of the Resolution as if such recitals and **Exhibit A** were specifically set forth at length in this Section 4.

**THE ABOVE RESOLUTION** was introduced and read and passed at the regular meeting of the Council of the City of Salisbury held on this 10<sup>th</sup> day of January, 2022 and is to become effective immediately upon adoption.

**ATTEST:**

  
\_\_\_\_\_  
Kimberly R. Nichols, City Clerk

  
\_\_\_\_\_  
John R. Heath, City Council President

Approved by me, this 11th day of January, 2022.

  
\_\_\_\_\_  
Jacob R. Day, Mayor

CABLE FRANCHISE AGREEMENT

BETWEEN THE

CITY OF SALISBURY, MARYLAND

AND

SHENANDOAH CABLE TELEVISION, LLC

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## **CABLE FRANCHISE AGREEMENT**

This Cable Franchise Agreement (hereinafter referred to as the "Agreement") is executed as of the 10th day of January, 2022 (hereinafter referred to as the "Effective Date") by and between the City of Salisbury, Maryland (hereinafter referred to as the "City") and Shenandoah Cable Television, LLC (hereinafter referred to as "Shentel").

**WHEREAS**, pursuant to the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, the Telecommunications Act of 1996 and any future amendments thereto (hereinafter collectively referred to as the "Cable Act"), the regulations of the Federal Communications Commission (hereinafter referred to as the "FCC") and Maryland law, the City is authorized to grant and renew franchises to construct, operate and maintain a cable system utilizing rights-of-way and properties within the City's jurisdiction; and

**WHEREAS**, the City adopted and subsequently amended a Cable Television Franchise Ordinance ("hereinafter referred to as the Ordinance"), codified at Chapter 5.22 of the City's Code of Ordinances, which further authorizes the City to grant and renew franchises to construct, operate, and maintain a cable system utilizing Rights-of-Way and properties within the City's jurisdiction; and

**WHEREAS**, Shentel currently holds a cable franchise from the City by virtue of a Cable Television Franchise Agreement with an effective date of January 10, 2022, and such franchise shall expire on January 10, 2032; and

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

**WHEREAS**, the City performed a cable ascertainment review, including identifying the City's future cable-related community needs; and

**WHEREAS**, the City has determined that Shentel has the financial, legal and technical ability to provide cable services to subscribers located in the City;

and

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

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

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

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

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

(a) Affiliated Entity Any person(s) and/or entity(ies) who own or control, are owned or controlled by, or are under common ownership or control with Shentel but does not include affiliated entities that are not involved with the use, management, operation, construction, repair or maintenance of Shentel's cable systems.

(b) Basic Service - That service tier which shall include at least the retransmission of local broadcast television signals

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

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

(e) Cable System - A facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the Township and designed in accordance with the International Telecommunication Union - Telecommunication Standardization Sector G.984 Standard for gigabit passive optical networks, but such term does not include (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves Subscribers without using any public right-of-way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act, except that such facility shall be considered



a Cable System (other than for purposes of Section 621 of the Cable Act) to the extent that facility is used in the transmission of video programming directly to Subscribers unless the extent of that use is solely to provide interactive on-demand services; (4) an open video system that complies with Section 653 of the Cable Act; (5) any facilities of any electric utility used solely for operating its electric utility systems

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

(g) City- The City of Salisbury, Maryland, including all incorporated areas of the City and any and all annexations by the City subsequent to the Effective Date of this Agreement.

(h) Complaint - Any written (including electronic) communication by a Subscriber expressing dissatisfaction with Shentel's Cable Service or the operation of its Cable System to provide Cable Service that is within Shentel's control and requires a corrective measure on the part of Shentel.

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

j) Educational Access Channel - An access channel in which the programming is educational in nature.

(k) Effective Date - January 10, 2022

(l) FCC - Federal Communications Commission.

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

(n) Franchise Fee - The fee that Shentel remits to the City pursuant to Section 622 of the Cable Act, 47 U.S.C. §542, and Section 4 of this Agreement.

(o) Governmental Access Channel - An access channel in which the programming is governmental in nature.

Gross Revenues - Revenue derived by the Grantee from the operation of the Cable System in the Franchise Area to provide Cable Service, calculated in accordance with generally accepted accounting principles ("GAAP"). Gross Revenue includes monthly basic cable, premium and pay-per-view video fees, installation fees and subscriber equipment rental fees. Gross Revenue shall not include refundable deposits, late fees, investment income, advertising revenue, home shopping revenue, leased access fees, nor any taxes, franchise fees, or other fees or assessments imposed or assessed by any governmental authority. Gross Annual Revenues shall not include actual bad debt that is written off, consistent with generally accepted accounting principles, provided however, that all or any part of any such actual bad debt that is written off, but subsequently collected, shall be included in the Gross Annual Revenues in the period so collected.

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

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

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

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

(q) Public Buildings - Shall mean the following: 1) those buildings owned or leased by the City for municipal government purposes, and shall not include buildings owned by the City, but leased to third parties, or buildings such as storage facilities at which government employees are not regularly stationed; 2) those buildings owned or leased by the Wicomico County Public School System ("School System") for administrative or instructional purposes, and shall not include buildings owned by the School System, but leased to third parties, or buildings such as storage facilities at which School System employees are not regularly stationed; and 3) those buildings owned or leased by the City for the public library system and shall not include buildings owned by the City, but leased to third parties, or buildings such as storage facilities at which library employees are not regularly stationed.

(r) Public, Educational, and Governmental ("PEG") Channels - Any access channels, or portion thereof, designated for Public Access, Educational Access, or Governmental Access purposes, or otherwise made available to transmit access

programming pursuant to Section 611 of the Cable Act.

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

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

(u) Service Interruption - The loss of picture or sound on one (1) or more channels.

(v) Subscriber - A person or entity who contracts with Shentel for, and lawfully receives, Cable Services distributed by the Cable System.

## **SECTION 2**

### **GRANT OF FRANCHISE AND LENGTH OF TERM**

#### **2.1 GRANT OF AUTHORITY**

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

#### **2.2 PERMITS**

Shentel shall apply to the City for all generally-applicable required permits and shall not undertake any activities in the Public Rights-of-Way subject to a permit without receipt of such permit, the issuance of which shall not be unreasonably withheld by the City. Shentel shall provide the City with all reasonable information and documentation related to the permit process. Shentel shall not be required to obtain permits for Cable Service drops for individual

Subscribers or for servicing or installation of pedestals or routine maintenance that does not disturb surface grade or impact vehicular traffic. Shentel shall pay any and all required permit fees.

### **2.3 TERM OF FRANCHISE**

The term of this Agreement shall be for a period of ten (10) years commencing on the Effective Date and expiring on January 10, 2032, unless the franchise is terminated prior to the expiration date in accordance with the terms and conditions of this Agreement.

### **2.4 NON-EXCLUSIVITY**

This Franchise granted to Shentel shall be non-exclusive. Nothing in this Agreement shall affect the right of the City to grant other franchises to construct, operate or maintain a cable system or for any other purpose.

### **2.5 NO WAIVER OF RIGHTS**

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

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

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

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

### **2.7 COMPETITIVE EQUITY**

(a) Shentel acknowledges and agrees that the City reserves the right to grant one or more additional franchises to construct, operate, and maintain a Cable System within the City.

(b) The franchise granted to Shentel is non-exclusive; however, if the City grants a subsequent Franchise that, when taken as a whole upon consideration of all of its material obligations, is more favorable or less burdensome to the subsequent franchisee than this Agreement is to Shentel, then Shentel may request an amendment to this Agreement to provide Shentel with competitive equity. If the City agrees with Shentel that, when taken as a whole upon consideration of all of its material obligations, the subsequent Franchise is more favorable or less burdensome, then the City and Shentel shall enter into discussions in order to modify this Agreement to the mutual satisfaction of both parties to provide Shentel with such competitive equity.

(c) In the event an application for a new Franchise for Cable Service is submitted to the City proposing to serve Subscribers within the City, then the City shall notify Shentel in writing of the submission of the application.

### **SECTION 3**

#### **SYSTEM CONSTRUCTION, OPERATION AND MAINTENANCE**

#### **3.1 TECHNICAL REQUIREMENTS**

(a) Shentel shall operate, maintain, construct and extend the Cable System so as to offer Cable Services in accordance with the requirements of Section 3.2. The Cable Service provided by the Cable System shall be delivered in accordance with applicable FCC standards and the Cable Act. The Cable System shall meet or exceed any and all applicable technical performance standards of the FCC, the National Electrical Safety Code, the National Electric Code and any other applicable federal laws and regulations and the laws, ordinances and construction standards of the State of Maryland and the generally applicable laws, ordinances and construction standards of the City.

(b) The Cable System shall be designed and maintained to have proper clearances between its facilities and the ground as well as between the cable lines and the equipment and facilities owned by other entities. These clearances shall be maintained throughout the entire system in accordance with the National Electrical Safety Code and the National Electrical Code. Pedestals that contain Cable System equipment, including but not limited to, amplifiers, splitters, taps, and distribution and drop cables, shall be properly secured in accordance with applicable law and regulations. All power supply boxes and service boxes must remain locked in accordance with applicable law and regulations.

(c) Stand-by power at the headend(s) and all power supply sites shall be provided in the event of a Service Interruption. Stand-by power must activate upon the failure of commercial utility power.

### **3.2 AREA TO BE SERVED**

(a) *General Availability:* The Franchisee shall build out its Cable System to make Cable Service generally available to those businesses and residential units located within the City. While Franchisee shall use commercially reasonable efforts to build out its network to serve as much of the City as is feasible taking into account build-out costs, geographical and geological conditions, and business conditions, Franchisee reserves the right in its sole discretion as to where Franchisee builds out its network in the City.

(b) *Service Drops:* The Franchisee shall extend its Cable System to potential Subscribers at no cost to said potential Subscribers other than the Franchisee's standard charge for a standard service drop (the "Standard Installation Fee"), provided that, if the point at which electric utility facilities enter the building (the "Entry Point") is located more than 250 feet from the Tap installed to serve that Subscriber, the Franchisee may charge an installation fee equal to the Standard Installation Fee, plus the actual cost of construction (defined as time and materials with a reasonable allocation for administrative costs) of Cable System facilities in excess of the 250 foot distance.

(c) *Cost Sharing:* If the conditions of Sections 3.1.1 are not met, the Franchisee shall only be required to extend the Cable System if the Subscribers in and area requesting Cable Service are willing to share the capital costs of extending the Cable System by making a capital contribution in aid of construction including the actual cost of material, design, labor and easements. Subscribers who request service hereunder shall bear the construction costs on a pro rata basis. The Franchisee may require that the payment of the capital contribution in aid of construction borne by potential subscribers be paid in advance. Subscribers shall also be responsible for any applicable installation charges to extend the Cable System from the tap to the residence.

The City has the authority to require Shentel to place wires and/or equipment underground, provided that the City imposes such requirement on all similarly situated entities. All installations of wires and/or equipment by Shentel shall be underground in those areas of the City where the wires and/or equipment of similarly situated entities are underground; provided, however, that such underground locations are capable of accommodating Shentel's facilities without technical degradation of the Cable System's signal quality. Shentel shall not be required to construct, operate, or maintain underground any ground-mounted appurtenances such as Subscriber taps, line extenders, system passive devices, amplifiers, power supplies, or pedestals. In the event that public or private funds are made available to pay for such project, Shentel may apply or request that the

City apply for such funds. In the event that Shentel is required to place existing aerial plant underground, Shentel reserves its right to pass those costs through to Subscribers if and to the extent allowed by applicable law.

### **3.3 REPAIRS AND RESTORATION**

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

(b) Whenever Shentel or any agent, including any subcontractor, shall install, operate or maintain equipment, cable, or wires, it shall avoid damage and injury to property, including structures, improvements and trees in and along the routes authorized by the City if required for the proper installation, operation and maintenance of such equipment, cable, or wires. Shentel shall promptly repair and restore any public or private property that is damaged as a result of construction, installation, repair or maintenance of the Cable System within twenty (20) business days, weather permitting.

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

### **3.4 SYSTEM MONITORING**

Shentel shall conduct periodic signal monitoring in accordance with the applicable technical requirements of the FCC.

### **3.5 SERVICE AREA MAPS**

Upon written request, Shentel shall make available to the City and shall maintain at its local offices a complete set of Shentel service area maps of the City, on which will be shown those areas in the public rights of way in which its facilities

exist and the location of all streets. Shentel is not required to show facilities on private property or service drops. Upon reasonable written notice, the City may inspect the maps during local business hours at the local notice location for Shentel in Section 14.2 below. The maps shall also designate where the cable wires and other equipment are known to be aerial and where they are known to be underground. Shentel shall provide the City with updated maps within thirty (30) days after any written request by the City and after execution of an appropriate non-disclosure agreement in a timely fashion.

### **3.6 BUILDING MOVES**

In accordance with applicable laws and subject to payment in advance of all applicable costs, Shentel shall, upon the request of any person holding a building moving permit issued by the City, temporarily raise or lower its wires to permit the moving of the building. Shentel shall be given at least thirty (30) days advance notice to arrange for such temporary wire changes.

### **3.7 DISCONNECTION AND RELOCATION**

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

(b) The City shall treat Shentel the same as, and require no more of Shentel, than any other similarly situated entity. Shentel shall have the right to seek reimbursement under any applicable insurance or government program for reimbursement.

### **3.8 EMERGENCY REMOVAL OF EQUIPMENT**

(a) If, at any time, in case of fire or other disaster in the City, it shall be necessary, in the reasonable judgment of the City or its agent, to cut or move any of the wires, cable or equipment of the Cable System, the City shall have the right



to do so without cost or liability, provided that, wherever possible, the City shall give Shentel notice and the ability to relocate wires, cable or other equipment.

(b) In cutting or moving any of the wires, cable or equipment of the Cable System in the event of fire or other disaster, the City shall treat Shentel the same as, and require no more of Shentel than, any other similarly situated entity. Shentel shall have the right to seek reimbursement under any applicable insurance or government program for reimbursement.

### **3.9 TREE TRIMMING**

(a) Shentel, or its agents, including subcontractors, shall have the authority to trim trees upon and overhanging public streets, alleys, sidewalks and the public rights-of-way so as to prevent the branches of such trees from coming in contact with the wires, cables, or other equipment of Shentel. Any such tree trimming shall only be performed in accordance with applicable laws and regulations.

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

### **3.10 SERVICES FOR SUBSCRIBERS WITH DISABILITIES**

Shentel shall comply with all applicable federal regulations, that ensure the provision of Cable Services and related equipment are accessible to and usable by persons with disabilities, if readily achievable.

### **3.11 CONTINUITY OF SERVICE**

Subscribers shall continue to receive Cable Service from Shentel provided their financial and other obligations to Shentel are honored. Subject to Force Majeure provisions in Section 14.1, Shentel shall use its best efforts to ensure that all Subscribers receive continuous, uninterrupted Service. For the purpose of construction, routine repairing or testing of the Cable System, Shentel shall use its best efforts to interrupt Service only during periods of minimum use. When necessary service interruptions of more than twenty-four (24) hours can be anticipated, Shentel shall notify Subscribers in advance of such service interruption along with providing Subscribers with a pro-rata credit for the time of such service interruption.

## **SECTION 4** **FRANCHISE FEES**

### **4.1 FRANCHISE FEES**

Shentel shall pay to the City an amount equal to five percent (5%) of the Gross Revenues actually received and derived from the operation of its Cable System to provide Cable Service in the City. For franchise fee purposes, the City shall include all incorporated areas and any and all annexations by the City at the time of each franchise fee payment. The City shall notify Shentel in writing of any and all such annexations. Upon receiving such notice, Shentel shall begin collection as soon as possible, but in no case later than sixty (60) days after such notice. Shentel shall be obligated to make franchise fee payments pertaining to such annexations at such time. Shentel shall not deduct or otherwise credit against the franchise fee any taxes, fees or assessments of general applicability, including but not limited to, public, educational, and governmental (PEG) support fees. The City may amend the franchise fee upon ninety (90) days written notice to Shentel provided that the franchise fee may not exceed the maximum percentage permitted by law. A copy of the Resolution or Ordinance authorizing the franchise fee rate adjustment by the City shall accompany such written notice.

### **4.2 QUARTERLY PAYMENTS**

(a) Franchise fee payments to the City under this provision shall be computed at the end of each calendar quarter and shall be due and payable within forty-five (45) days after the end of each of the first three quarters and sixty (60) days after the close of the fourth quarter of the year. Specifically, payments shall be due and payable on or before May 15 (for the first quarter), August 15 (for the second quarter), November 15 (for the third quarter), and March 1 (for the fourth quarter). Upon request and if mutually agreeable, Shentel shall deposit the franchise fee payments electronically into an account as designated by the City.

(b) In the event that any franchise fee payment is not made on or before the date by which it is due, then interest calculated at the then-current prime rate as published in the Wall Street Journal on the due date shall be added to the amount of franchise fee revenue due to the City. The interest rate shall be applied as described from the date such franchise fee payment was originally due. No acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any payment be construed

as a release of any claim the City may have for additional sums payable under this Agreement.

#### **4.3 QUARTERLY REPORTS**

Within ten (10) days of each franchise fee payment described in Section 4.2 above, Shentel shall provide a written report containing an accurate statement of Shentel's Gross Revenues received for Cable Services for each calendar quarter in connection with the operation of Shentel's Cable System and a brief description showing the basis for computation of fees. Specifically, the report shall contain line items for sources of revenue received and the amount of revenue received from each source. The report shall also be verified by a financial representative of Shentel.

#### **4.4 FRANCHISE FEE AUDITS**

(a) Not more than once every three years the City shall have the right to conduct a Franchise Fee audit or review of Shentel's records reasonably related to the sources, amounts and computation of Gross Revenues. Any such Franchise Fee audit or review shall occur within sixty (60) months from the date the City receives such payment, after which period any such payment shall be considered final. Within thirty (30) days of a written request, Shentel shall provide the City with copies of financial records related to the Franchise Fee audit or review.

(b) In the event of an alleged underpayment, the City shall provide Shentel with a written statement indicating the basis for the alleged underpayment. Shentel shall have thirty (30) days from the receipt of the statement regarding an alleged underpayment to provide the City with any written objection to the results of the Franchise Fee audit or review, including any substantiating documentation. Based on this exchange of information, the City shall make a final determination of the underpayment(s), if any, within thirty (30) days of Shentel's objection and shall provide Shentel with written notice of the determination. If Shentel disputes the City's final determination, it may submit the dispute to mediation or arbitration within thirty (30) days of receiving the City's written notice of determination. In the event that Shentel fails to submit the matter to mediation or arbitration within the required time period, the City's final determination shall be binding on Shentel.

(c) Any Franchise Fee payment due to the City as a result of the Franchise Fee audit or review shall be paid to the City by Shentel within sixty (60) days from the date the City notifies Shentel of its final determination, or if the matter is submitted to mediation or arbitration, within sixty (60) days from the final

disposition of such action. If the Franchise Fee audit or review shows that Franchise Fees have been underpaid, then Shentel shall pay the underpaid amount plus monetary fines of ten percent (10%) of the underpayment. If Franchise Fees have been underpaid by five percent (5%) or more, then Shentel shall also pay up to Three Thousand (\$3,000) Dollars in documented out-of-pocket costs of the Franchise Fee audit or review.

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

Nothing in this Section or in this Agreement shall be construed to limit the authority of the City to impose any tax, fee or assessment of general applicability. Such taxes, fees or assessments shall be in addition to franchise fees.

#### **4.6 BUNDLED SERVICES**

All revenue earned from bundled services shall be allocated to Cable Service and non-Cable Service in accordance with generally accepted accounting principles (GAAP). It is understood that in some cases equipment and other non-service charges may be allocated at full retail price due to requirements related to sales taxes or similar tax requirements. To the extent such allocations are discretionary or otherwise not addressed by GAAP, allocations of revenue from such bundles shall not be structured for the purpose of evading franchise fees applicable to cable services.

### **SECTION 5** **CABLE SYSTEM SPECIFICATIONS**

#### **5.1 CABLE SYSTEM SPECIFICATIONS**

(a) The parties understand and agree that Shentel will design, construct and maintain a Cable System that has been built for digital television standards. The Cable System shall continue to be capable of providing high quality video and audio reception in both standard definition (SD) and high definition (HD) channels, and video-on-demand.

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

## **5.2 SYSTEM TESTS**

Shentel shall perform proof of performance tests as required by FCC rules to demonstrate compliance with the requirements of the Ordinance, this Franchise Agreement, FCC standards, and any applicable standards of Good Engineering Practices for Measurements on Cable Systems, published by the National Cable Television Association. Upon request Franchisee shall provide proof of performance test results promptly to the LFA. Upon the LFA's request, Shentel must provide at least ten (10) days advance written notice to LFA of when a 1 proof of performance test is scheduled so that the LFA may have an observer present.

(a)

## **5.3 EMERGENCY ALERT SYSTEM**

Shentel shall comply with all emergency or disaster notification requirements in accordance with the Emergency Alert System ("EAS") requirements of the FCC contained in 47 C.F.R. Part 11 .

# **SECTION 6 REGULATION BY THE CITY**

## **6.1 RIGHT TO INSPECT**

(a) Upon thirty (30) days written request to Shentel, the City may inspect all documents, records and other pertinent information maintained by Shentel which relate to compliance with the terms and conditions of this Agreement and applicable law.

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

(c) Upon thirty (30) days written request to Shentel, the City may inspect the Cable System at any time to ensure compliance with this Agreement and applicable law, including to ensure that the Cable System is constructed and maintained in a safe condition and in accordance with the terms and conditions of this Agreement.

(d) Notwithstanding anything to the contrary set forth herein, all information specifically marked by Shentel as proprietary or confidential in nature and furnished to the City or its designated representatives shall be treated as confidential by the City so long as it is permitted to do so under applicable law. Representatives and/or agents and/or designees of the City may be requested to execute a non-disclosure agreement prior to the provision by Shentel of certain confidential information, provided such representatives and/or agents are permitted to do so under applicable law. The City and its officially designated representatives agree in advance to treat any such information or records which Shentel reasonably deems would provide an unfair advantage for Shentel's competitors (e.g. system design maps, engineering plans, programming contracts, etc.) as confidential so long as permitted to do so under applicable law and only to disclose it to City employees, agents, or representatives who have a need to know or in order to enforce the provisions of this Agreement. In the event a request is made by an individual or entity not an employee, agent or representative of the City acting in their official capacity for information related to the franchise and marked by Shentel as confidential and/or proprietary, the City shall notify Shentel of such request. Shentel shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act, or information which is not relevant to regulation of the franchise (e.g. employee files, tax returns, etc.).

## **6.2 RIGHT TO CONDUCT COMPLIANCE REVIEW**

Not more than once every thirty-six (36) months during the term of this Agreement, the City or its representatives may conduct a full compliance review with respect to whether Shentel has complied with the material terms and conditions of this Agreement so long as it provides Shentel with thirty (30) days written notice in advance of the commencement of any such review or public hearing. Such notice shall specifically reference the section(s) or subsection(s) of the Agreement that is (are) under review, so that Shentel may organize the necessary records and documents for appropriate review by the City. Within thirty (30) days of a written request, Shentel shall provide the City with copies of records and documents reasonably related to the cable compliance review. The period for any such review shall be for not more than sixty (60) months immediately previous to the notice. The City shall promptly inform Shentel of any non-compliance issues that result from the compliance review.

### **6.3 RESERVED AUTHORITY**

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

### **6.4 POLICE POWERS**

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

### **6.5 REPORTING**

In addition to the other reporting requirements contained in this Agreement , Shentel shall provide the following reports to the City upon written request:

(a) Subscriber Complaint Reports

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

(b) Annual Financial Reports

Within thirty (30) days of a written request, Shentel shall submit to the City its current financial statement, including a statement of income, balance sheet and a statement of sources and applications of funds which shall be verified by Shentel's Chief Financial Officer in accordance with generally accepted accounting principles. Submission by Shentel of the most recent U.S. Securities and Exchange Commission Annual Report Form 10-K prepared by Shentel shall be deemed as satisfactory compliance with this section.

(c) Operational Reports

Within thirty (30) days of a written request and not more than once per year, Shentel shall provide the following:

(1) Results of proof of performance tests on the Cable System as required by applicable FCC rules (Subparts K and V of Part 76) for the previous twelve (12) months, except as federal law otherwise limits Shentel's obligation;

(2) Cable System outage logs applicable to the City for the previous twelve (12) months;

(3) Cable System preventative maintenance logs applicable to the City for the previous twelve (12) months; and/or

(4) "Trouble call reports" for the previous twelve (12) months showing the number of Complaints, as defined in Section 1(h) above, that required a work order and/or service call originating from the City, the dates they were received, summary descriptions of the Complaints, the dates the Complaints were resolved, and summary descriptions of the resolutions.

**SECTION 7**  
**SERVICES TO COMMUNITY FACILITIES**

**7.1 COMPLIMENTARY CABLE SERVICE**

Within three (3) months of the substantial completion of its cable system in the City, and upon request, Shentel shall, at no charge to the City, provide or maintain its basic tier (or equivalent) package, including converters or digital transport adapters ("OTA's"), or other required end- user equipment and standard installation, to all Public Buildings, as defined in Section 1(q) above, located in the City upon written request by the City. No charge shall be made for standard installation of such service, except that Shentel may charge for installation beyond two hundred (200) feet from the termination of the existing distribution system. Notwithstanding the foregoing, Shentel shall continue to supply at no charge, throughout the term of this Agreement, all current converters, DTA's, or other equipment necessary to receive Cable Service that had been provided to the Public Buildings as of the Effective Date of this Agreement. During the term of this Agreement, new facilities shall be eligible to receive such complimentary service upon written request of the City to the extent that they meet the qualifications as set forth herein and in the side agreement;



provided, however, that no complimentary service shall be made to any entity in these facilities that is not a City, school or public library organization.

## **SECTION 8**

### **PUBLIC, EDUCATIONAL AND GOVERNMENTAL (PEG) CHANNELS**

#### **8.1 PEG CHANNELS**

(a) Shentel shall make available to the City one (1) dedicated channel for Public, Educational, and Government ("PEG") access Programming purposes in accordance with Section 611 of the Cable Act for the exclusive use of the City and/or its designee.

(b) Additional PEG Channels. The City may request an additional PEG channel, not to exceed a total of two (2) channels, so long as a threshold use requirement is met for the PEG access channel designated above. In order to obtain an additional PEG Channel, the existing PEG Access Channel must be programmed at least twenty-four (24) hours a week with locally produced, non-repetitive, and non-character generated PEG Access Programming, for a minimum of six (6) consecutive weeks. The City must provide Shentel with written, detailed documentation evidencing that the usage meets the threshold requirement for such Channel. Shentel shall have 180 days to provide the requested additional Channel capacity. Once the threshold is met and the additional Channel is made available, the initial PEG Channel must maintain the threshold requirement.

(c) Non Commercial Use. A PEG Channel may not be used to cablecast programs for profit, political, or commercial fundraising in any fashion. Nothing in this Agreement, however, shall prohibit a PEG Channel or any entity responsible for managing a PEG Channel from entering into underwriting or sponsorship arrangements with third party entities that conform to sponsorship guidelines used by the Public Broadcasting Service (PBS).

(c) Use of Fallow Time. Because blank PEG Channels are not in the public interest, in the event the City or other PEG access user elects not to program a Channel for a period of at least seven (7) days, Shentel may program such Channel thirty (30) days after providing the City with written notice of its intent to program the Channel, subject to reclamation by the City upon no less than 60 days' written notice.

(b) Such PEG Channel(s) shall be used for community programming related to public, educational and/or governmental activities. Their purpose is to

contribute to an informed citizenry by, among other things, showing local government at work, responding to local needs and bringing local education into the home. The City may delegate the administration of any PEG channels to an appropriate designee. Shentel shall not exercise editorial control over PEG Channel programming, but may refuse to transmit any public access program or portion of a public access program that contains obscenity, indecency, or nudity pursuant to Section 611 of the Cable Act. Shentel shall cablecast all activated PEG Channels so that they are received by all Shentel Subscribers in the City.

## **8.2 RETURN LINES**

(a) Shentel shall install or obtain and maintain Return Lines for the PEG Channel, including Return Lines from the City Government Office Building located at 125 N Division Street (hereinafter "GOB") and the PAC 14 Studio located at the East Campus Complex Building on the Salisbury University Campus. In addition, Shentel shall provide and install Return Lines as follows:

- (i) From the PAC 14 Studio directly to the Shentel headend;
- (ii) From the West Salisbury Fire Station Training Room/EOC located at 325 Cypress Street, Salisbury to the PAC 14 Studio;
- (iii) From the GOB to the PAC 14 Studio;

(b) The Return Line locations listed above are subject to change by the City. The term "Return Line" as used in this section refers to direct fiber optic links, including activation equipment capable of transmitting and receiving high quality video and audio, between each of the video origination locations described above such that live programming can originate from the selected locations and be distributed via the cable system to Subscribers in the City. Within ninety (90) days of a written request from City for any Return Lines, Shentel shall provide the appropriate officials of the City with a route design and associated cost estimate, including a detailed bill of materials. The City will respond with any comments and questions on the design and cost estimate within thirty (30) days of receipt. Shentel and the City shall discuss the City comments and resolve any issues related to the route and associated costs within thirty (30) days of receipt of the comments prior to Shentel commencing installation of the Return Lines. The City shall approve the final route and associated costs. Once approved, Shentel shall build and activate the Return Lines within one hundred twenty (120) days of approval. The City shall pay for the construction of the Return Lines from the PEG capital grant received by Shentel pursuant to Section 8.4 below.

(b) Shentel shall be responsible for maintaining the Return Lines to the video origination points of all of the PEG Channels so long as the City provides

Shentel with access to those locations and access to the PEG Channel equipment within these locations. Shentel shall provide, install and maintain in good working order the equipment necessary for transmitting the signal to the Channel aggregation sites for further processing and distribution to Subscribers. Shentel shall not be responsible for the technical signal quality of programming produced by any PEG Channel programmer.

### **8.3 ADDITIONAL PEG CHANNEL REQUIREMENTS**

(a) Shentel shall transport and deliver the PEG Channel(s) signals at a level of technical quality, functionality, features and reliability that complies with the levels of technical quality and reliability provided by Shentel for signals of other commercial channels transmitted to Subscribers on its System.

(b) Shentel shall use its best efforts to maintain the Channel assignments for the current PEG Channel as of the Effective Date and the initial channel assignments for any additional PEG Channels described in Section 8.1

(a) above. Notwithstanding the foregoing, Shentel does not relinquish its ownership of or ultimate right of control over a Channel by designating it for access programming use. In the event that Shentel deems a change in any PEG Channel assignment to be necessary and changes any channel assignment in accordance with this Section, Shentel shall comply with the following requirements:

(1) Shentel shall provide the City thirty (30) days advance written notice of any change in PEG Channel assignments

(2) Shentel shall include notice of such change in at least two (2) bill inserts regarding the change in channel assignments with at least one occurring prior to the change;

(3) Shentel shall provide the City with up to Three Thousand Dollars (\$3,000) per Channel for documented out of pocket expenses associated with the change, provided that the PEG entity operating the Channel may only claim this compensation under one applicable franchise agreement;

(c) Shentel shall provide at each PEG origination site one complimentary cable drop and Expanded Basic service (or equivalent) package, plus any other tier of service that includes PEG Channels, including converter box, digital adapter, and other end user equipment, for purposes of monitoring the PEG programming content transmitted over the Cable System.

(d) The City shall require all local producers of public access programming to agree in writing to defend and hold harmless the City and Shentel from and against any and all liability or other injury, including the reasonable cost of defending claims or litigation, arising from or in connection with claims for failure to comply with applicable federal, state or local laws, rules, and/or regulations; for claims of libel, slander, invasion of privacy, or the infringement of common law or statutory copyright for unauthorized use of any trademark, trade name, or service mark; for breach of contractual or other obligations owing to third parties by the producer or user; and for any other injury or damage in law or equity, which results from the use of an public access facility or Channel. Such indemnification by local producers shall not include the technical signal quality of the PEG channel.

(e) The City and Shentel agree that any and all costs incurred by Shentel for supporting such PEG channel(s), including any and all equipment, PEG support grants, and maintenance and repair, may be designated as "costs of franchise requirements" or "external costs" as defined by the FCC and Shentel reserves its right to pass these costs through to the Subscribers pursuant to federal law.

(f) The City or its designee shall be responsible for providing any necessary production or playback equipment and shall be responsible for securing and supervising any trained/qualified personnel who conduct the operation of the PEG channel(s).

(g) Shentel shall monitor all of the PEG Access Channels for technical quality and shall ensure that they are maintained at standards commensurate with those which apply to the Cable System's commercial channels. Shentel may implement carriage of the PEG channel in any manner (including selection of compression, utilization of IP, and other processing characteristics) that produces a signal as accessible, functional, useable and of a quality equivalent from the perspective of the viewer to other comparable channels carried on the Cable System.

(h) Shentel will, to the extent technologically and economically feasible, cooperate with the City and the applicable third party to arrange for programming description information to be available on the digital guide. The cost of such carriage shall be borne by the City, or any other entity responsible for programming or managing the PEG Channels, and each such entity shall be responsible for providing the required programming description to the third party vendor used by Shentel to manage the digital guide.

(i) Shentel shall maintain any and all existing PEG Channel video interconnections between the City and Access providers and entities outside of the

City so long as they are being actively used and remain legally and technically feasible.

#### **8.4 PEG CAPITAL GRANT**

Shentel shall provide the City with a PEG Capital grant to be used for PEG capital equipment and facilities purposes. The PEG Capital grant provided by Shentel shall be in an one-time amount of \$5,000.00.

### **SECTION 9 CUSTOMER SERVICE STANDARDS**

#### **9.1 OFFICE HOURS AND TELEPHONE AVAILABILITY**

(a) In accordance with applicable law, customer service centers shall be conveniently located and open during Normal Business Hours. Shentel shall provide and maintain a local or toll free telephone access line that will be available to Subscribers twenty-four (24) hours a day, seven (7) days a week. Trained representatives shall respond to customer telephone inquiries during Normal Business Hours. After Normal Business Hours, the access line may be answered by a service or an automated response system. Inquiries received after Normal Business Hours must be responded to by a trained company representative on the next business day.

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

(c) Under Normal Operating Conditions, the customer shall receive a busy signal less than three percent (3%) of the time.

(d) Shentel shall not be required to acquire equipment or perform surveys to measure compliance with the telephone answering requirements above

unless a historical record of written Complaints indicates a clear failure to comply. If the City determines, after receiving Complaints itself and/or receiving a record of Complaints made to Shentel, that there is a clear failure to comply with the telephone answering requirements above, the City shall notify Shentel in writing that it must measure its compliance with these requirements for the next ninety (90) days and report to the City the results of such measurements.

## **9.2 INSTALLATIONS AND SERVICE CALLS**

(a) Shentel shall maintain a staff of employees sufficient to provide adequate and prompt service to its Subscribers. Shentel shall require that any employee or agent, including any subcontractor, who personally visits any residential dwelling, shall display a photo identification badge. Any vehicle used for installation, operation or maintenance activities by any Shentel employee or agent, including any subcontractor, shall prominently display the Shentel or Glo Fiber logo and/or sufficient markings (such as a magnetic door sign) indicating that the contractor or agent is under contract to Shentel.

(b) Under Normal Operating Conditions, standard installations will be performed within seven (7) business days after an order has been placed. "Standard Installations" are those aerial installations that are located up to one hundred fifty (150) feet from the existing distribution system.

(c) Under Normal Operating Conditions, Shentel shall begin working on a Service Interruption promptly and in no event later than twenty-four (24) hours after the interruption becomes known. Notice of a Service Interruption of three (3) Subscribers shall give rise to this obligation on behalf of Shentel. Shentel shall begin actions to correct other service problems the next business day after notification of the service problem.

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

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

### **9.3 NOTICES**

(a) Shentel shall provide written notice to each Subscriber upon initial subscription, and once per calendar year thereafter to each Subscriber, and at any time upon request, regarding each of the following areas:

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

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

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

### **9.4 BILLING**

(a) Bills shall be clear, concise and understandable. Bills must be itemized and shall include all applicable service tiers, equipment charges and any

installation or repair charges. Bills shall state the billing period, including an effective due date, the amount of current billing and any relevant credits or past due balances.

(b) Shentel shall provide the name, address, and telephone number of the City to Subscribers on the monthly bill, unless the City requests in writing that Shentel omit such information in accordance with 47 C.F.R. § 76.952.

(c) Shentel shall not assess late fees for non-payment of a current bill until at least twenty-five (25) days have elapsed since the mailing of the bill by Shentel.

## **9.5 CUSTOMER COMPLAINT PROCEDURES**

Shentel shall establish clear written procedures for resolving customer Complaints, which shall include at least the following:

(a) Shentel shall provide the customer with a written response to a written Complaint within thirty (30) days of its receipt if the Complaint has not been resolved to the customer's satisfaction. Such response shall include the results of its inquiry into the subject matter of the Complaint, its conclusions based on the inquiry, and its decision in response to the Complaint.

(b) If the City is contacted directly about a customer Complaint, it shall notify Shentel promptly and in writing. When Shentel receives such notification, the time period for Shentel to respond as required by Section 9.5 (a) above shall commence. If the City notifies Shentel in writing, then Shentel shall respond in writing within the time period specified in Section 9.5 (a) above.

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

- (1) The Subscriber provides a written Complaint to Shentel in a timely fashion and includes identifying information;
- (2) The Subscriber pays all undisputed charges; and
- (3) The Subscriber cooperates in determining the appropriateness of the charges in dispute.



(d) Subject to applicable privacy laws, Shentel shall maintain customer Complaint records for inspection by the affected Subscriber, which shall contain the date each Complaint is received, the name and address of the affected Subscriber, a description of the Complaint, the date of resolution of the Complaint, and a description of the resolution.

## **9.6 CREDIT FOR SERVICE INTERRUPTIONS**

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

## **9.7 PRIVACY**

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

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

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

(d) Upon a request by a Subscriber, Shentel shall make available for inspection at a reasonable time and place all personal Subscriber information that Shentel maintains regarding said Subscriber. Shentel shall ensure that all information related to billing and service requests is accurate and up-to-date and shall provide Subscribers with a reasonable opportunity to correct any errors.

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

## **SECTION 10**

### **FRANCHISE VIOLATIONS, DAMAGES AND REVOCATION**

#### **10.1 VIOLATIONS AND OPPORTUNITY TO CURE**

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

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

(c) If the violation is material and has not been cured within the time allowed under Section 10.1(b) and, in the City's judgment, Shentel has not taken reasonable steps to cure the violation, then the City may deem that Shentel is liable for liquidated damages and/or any other right or remedy in accordance with Sections 10.2-10.4.

#### **10.2 LIQUIDATED DAMAGES**

(a) Because Shentel's failure to comply with material terms of this Agreement may result in harm to the City and because it will be difficult to measure the extent of such injury, the City may assess liquidated damages against Shentel in the amount of Two Hundred Fifty Dollars (\$250.00) per day for each day the violation continues, provided Shentel has had an opportunity to cure in accordance with Section 10.1(b) and the City is not pursuing other penalties or remedies. Such damages shall not be a substitute for specific performance by Shentel or legal action by the City, but shall be in addition to such specific performance or legal action.

(b) The first day for which liquidated damages may be assessed, if there has been no cure after the end of the applicable cure period, shall be the day after the end of the applicable cure period, including any extension of the cure period granted by the City. Liquidated damages may not be assessed for a time period exceeding one hundred and twenty (120) days per violation. The City may commence revocation proceedings and/or initiate an action in law or equity in a court of competent jurisdiction after the assessment of liquidated damages or in lieu of liquidated damages.

### **10.3 REVOCATION**

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

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

(2) Shentel repeatedly fails, after notice and opportunity to cure, to maintain signal quality pursuant to the standards provided for by the FCC or the technical requirements set forth in Section 5.1 of this Agreement;

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

(b) The foregoing shall not constitute a violation of a material term or condition if the violation occurs without the fault of Shentel or occurs as a result of circumstances beyond its control or by reason of Force Majeure as defined in Section 14.1. Shentel shall not be excused from the performance of any of its obligations under this Franchise by mere economic hardship or by the misfeasance or malfeasance of its directors, officers or employees.

(c) A revocation shall be declared only by a written decision of the City after an appropriate public hearing that shall afford Shentel due process and full opportunity to be heard. This shall include the ability to introduce evidence, to question witnesses and to respond to any notice of grounds to terminate in accordance with the standards of a fair hearing applicable to administrative hearings in the State of Maryland. All notice requirements shall be met by providing Shentel at least thirty (30) days prior written notice (via certified mail-return receipt requested) of any public hearing concerning the proposed revocation of this franchise. Such notice shall state the grounds for revocation. The City, after a public hearing and upon finding the existence of grounds for revocation,

may either declare this Franchise terminated or excuse such grounds upon a showing by Shentel of mitigating circumstances or good cause for the existence of such grounds. The City shall issue such declaration and finding within thirty (30) days in a written decision which the City shall send via certified or overnight mail to Shentel. Shentel may appeal such written determination to an appropriate court of competent jurisdiction.

#### **10.4 PERFORMANCE BOND**

(a) Shentel shall obtain and maintain during the Franchise term, at its sole cost and expense, a performance bond running to the City with a surety company licensed to do business in the State of Maryland and satisfactory to the City to ensure Shentel's faithful performance of its obligations. The performance bond shall provide that the City may recover from the principal and surety any and all liquidated damages and/or compensatory damages incurred by the City for Shentel's violations of this Agreement, after notice and opportunity to cure, in accordance with Sections 10.1, 10.2, and 10.3 above.

(b) The performance bond shall be in the amount of Seventy-Five Thousand Dollars (\$75,000). Shentel shall not reduce, cancel or materially change said bond from the requirement contained herein.

### **SECTION 11 LIABILITY AND INDEMNIFICATION**

#### **11.1 INDEMNIFICATION**

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

## 11.2 INSURANCE

(a) Shentel shall maintain insurance throughout the term of this Agreement with an insurance company which is authorized to conduct business in Maryland and which has an A.M. Best rating (or equivalent) no less than "A-minus VII", indemnifying the City from and against any and all claims for injury or damage to persons or property, both real and personal, caused by the construction, installation, reconstruction, operation, maintenance or removal of the Cable System by Shentel or any of its contractors, subcontractors, agents or employees in the following amounts:

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

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

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

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

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

(c) All insurance coverage shall be maintained throughout the period of this Agreement. Shentel shall not cancel any required insurance policy without obtaining alternative insurance in conjunction with this Section 11.2 and without providing notice to the City verifying that Shentel has obtained such alternative insurance. All insurance policies shall contain a provision that the City will receive thirty (30) days' written notice prior to any material changes or cancellation of the policy. All expenses incurred for said insurance shall be at no cost to the City.

(d) A certificate evidencing the insurance coverage required herein shall be provided by Shentel to the City within thirty (30) days of the Effective Date, upon request by the City and within thirty (30) days of obtaining new insurance coverage or renewal of such insurance coverage throughout the term of this Agreement.

**SECTION 12**  
**FRANCHISE TRANSFER AND RENEWAL**

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

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

(b) Neither Shentel nor its parent nor any Affiliated Entity shall change, transfer or assign, through its own action or by operation of law, its control of the Cable System or of this Agreement without the prior written consent of the City.

(c) Neither Shentel nor its parent nor any Affiliated Entity shall sell, convey, transfer, exchange or release more than twenty-five (25%) of its equitable ownership in the Cable System without the prior written consent of the City.

(d) No such consent shall be required for (i) a transfer in trust, by mortgage, hypothecation, or by assignment to a financial institution of any rights, title or interest of Shentel in the Franchise or in the Cable System in order to secure indebtedness; or (ii) a transfer to an entity owned and/or controlled by Shentel.

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

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

## **12.2 RENEWAL**

The City and Shentel agree that any proceedings or activities that relate to the renewal of Shentel's franchise shall be governed by applicable federal and state law.

### **SECTION 13 REMOVAL OF SYSTEM**

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

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

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

### **SECTION 14 MISCELLANEOUS**

#### **14.1 FORCE MAJEURE**

If for any reason of force majeure, Shentel is unable in whole or in part to carry out its obligations hereunder, Shentel shall not be deemed in violation of this Agreement during the continuance of such inability. The term "force majeure" as used herein shall have the following meaning: acts of God; acts of public

enemies, including terrorist attacks; orders of any kind of the government of the United States of America or of the State of Maryland or any of their departments, agencies, political subdivisions, or officials, or any civil or military authority; insurrections, riots, epidemics; landslides; earthquakes; hurricanes; volcanic activity; floods; washouts; droughts; explosions; and partial or entire failure of non-affiliated utilities.

## **14.2 NOTICES**

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

City Administrator  
City of Salisbury, MD  
125 N. Division Street  
Salisbury, MD 21801

With copies to:

Shentel  
500 Shentel Way  
Edinburg, VA 22824  
Attn: Chris Kyle

The City may specify any change of address in writing to Shentel. Every notice to be served upon Shentel shall be sent to:

Shentel  
500 Shentel Way  
Edinburg, VA 22824  
Attn: Chris Kyle



Shentel may specify any changes of address in writing to the City. Each delivery to Shentel or the City shall be equivalent to direct personal notice, direction or order, and shall be deemed to have been given at the time of receipt.

#### **14.3 EQUAL EMPLOYMENT OPPORTUNITY**

Shentel is an equal opportunity employer and it shall comply with all applicable federal, state and local laws and regulations regarding equal opportunity employment.

#### **14.4 CAPTIONS**

The captions for sections throughout this Agreement are intended solely to facilitate reading and references to the sections and provisions of this Agreement. Such captions shall not affect the meaning or interpretation of this Agreement

#### **14.5 GOVERNING LAW**

This Agreement shall be governed and construed by and in accordance with the laws of the State of Maryland. If suit is brought by a party to this Agreement, the parties agree that trial of such action shall be vested in in the State Courts of Maryland, County of Wicomico or in the United States District Court of Maryland.

#### **14.6 ENTIRE AGREEMENT**

This written instrument contains the entire agreement between the parties, supersedes all prior agreements, ordinances, or proposals except as specifically incorporated herein, and cannot be changed without written amendment approved by both the City and Shentel. In the event of a conflict between this Franchise Agreement and the Ordinance or any other enabling ordinance, law or regulation in effect at the time of this Agreement or thereafter, the terms and conditions of this Franchise Agreement shall be controlling.

#### **14.7 SEVERABILITY**

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

#### **14.8 CHANGE OF LAW**

In the event there is a change in a federal or state statute or regulation applicable to the Cable System or to this Agreement, which requires Shentel to perform or refrain from performing any act the performance or non-performance of which is inconsistent with any provision herein, the City and Shentel may thereupon, if they both determine that a material provision herein is affected, modify any of the provisions herein to reflect such government action.

#### **14.9 COMPLIANCE WITH LAWS**

Shentel shall comply with all applicable federal, state and generally applicable local laws, regulations and ordinances.

#### **14.10 APPLICABILITY OF AGREEMENT**

All of the provisions in this Agreement shall bind Shentel, the City and their respective successors and assigns. This Agreement is authorized by Resolution No. dated January 10, 2022 of the Salisbury City Council.

#### **14.11 NO RECOURSE**

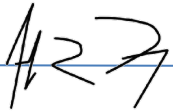
Except for action seeking equitable relief, Shentel shall have no recourse whatsoever against the City for any loss, cost, expense, or damage arising out of any provisions or requirements of this Agreement or because of the enforcement thereof by the City, or failure of the City to have authority to grant all or part of the franchise.

#### **14.12 THIRD-PARTY BENEFICIARIES**

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

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

**CITY OF SALISBURY, MARYLAND**

By: 

Print: Jacob R. Day

Title: Mayor

Date: 11 January 2022

**SHENANDOAH CABLE TELEVISION, LLC**

By: 

Print: Chris Kyle

Title: Vice President

Date: 2/1/2022



City of  
**Salisbury**  
Jacob R. Day, Mayor

## MEMORANDUM

**To:** Julia Glanz, City Administrator  
**From:** Bill Garrett, Director of Information Services  
**Date:** December 16, 2021  
**Re:** Shentel Franchise Agreement

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Please find the attached resolution and franchise agreement for consideration. Shentel is an Internet, telephone and cable television provider who wishes to expand their services into the City of Salisbury. We have negotiated the franchise agreement, attached, and are ready to proceed with the project.