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**VILLAGE OF WILLOW SPRINGS  
COOK COUNTY, ILLINOIS**

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**ORDINANCE  
NUMBER 2010-O-1**

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**AN ORDINANCE APPROVING AN AGREEMENT  
BETWEEN THE VILLAGE OF WILLOW SPRINGS AND COMCAST  
VILLAGE OF WILLOW SPRINGS, ILLINOIS**

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**ALAN NOWACZYK, President  
ADENA BASKOVICH, Clerk**

**GEORGE BARTIK  
MARIO IMBARRATO  
ANNETTE KAPTUR  
KATHRYN STANPHILL  
JERRY STRAZZANTE**

**Trustees**

**ORDINANCE NO. 2010-O-1**

**AN ORDINANCE APPROVING AN AGREEMENT  
BETWEEN THE VILLAGE OF WILLOW SPRINGS AND COMCAST  
VILLAGE OF WILLOW SPRINGS, ILLINOIS**

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**WHEREAS**, the Village of Willow Springs is a duly organized and existing municipal corporation created under the provisions of the laws of the State of Illinois and under the provisions of the Illinois Municipal Code, as from time to time supplemented and amended; and

**WHEREAS**, The Village of Willow Springs is responsible for negotiating contracts / agreements with multimedia and cable providers for its citizens; and

**WHEREAS**, the Village of Willow Springs has previously executed an Agreement with Comcast; and

**WHEREAS**, the Village of Willow Springs has been in negotiations with Comcast relative to the terms and conditions of a new ten (10) year Agreement; and

**WHEREAS**, the Village of Willow Springs and Comcast have agreed to the terms of the new Agreement (attached hereto as Exhibit A); and

**NOW, THEREFORE, BE IT RESOLVED** by the President and Board of Trustees of the Village of Willow Springs, Cook County, Illinois, as follows:

**SECTION 1:** That the above recitals are incorporated herein and made a part hereof.

**SECTION 2:** The Village President and Village Clerk are hereby authorized by the Village Board to enter into the Agreement with Comcast.

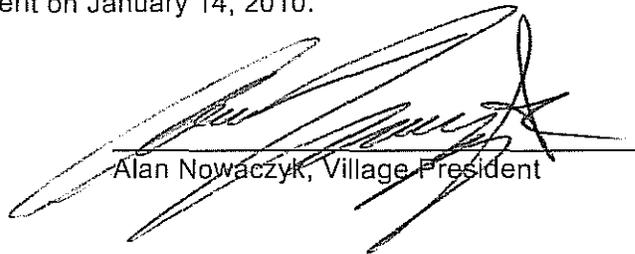
**SECTION 3:** If any section, paragraph, clause or provision of this ordinance shall be held invalid, the invalidity thereof shall not affect any of the other provisions of this ordinance.

**SECTION 4:** All ordinances in conflict herewith are hereby repealed to the extent of such conflict.

**ADOPTED** this 14<sup>th</sup> day of January, 2010, pursuant to a roll call vote as follows:

	YES	NO	ABSENT	PRESENT
BARTIK	✓			✓
IMBARRATO	✓			✓
KAPTUR	✓			✓
STANPHILL			✓	
STRAZZANTE	✓			✓
MAYOR NOWACZYK				✓
TOTAL	4		1	5

**APPROVED** by the President on January 14, 2010.



Alan Nowaczyk, Village President

**PUBLISHED** and **DEPOSITED** in my office this 14<sup>th</sup> day of January, 2010.



Adena Baskovich, Village Clerk

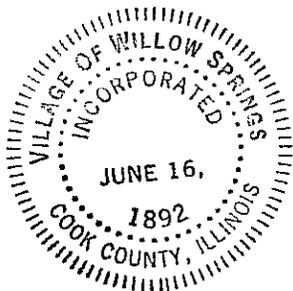
STATE OF ILLINOIS     )  
  ) SS  
COUNTY OF COOK     )

CERTIFICATION

I, Adena Baskovich, DO HEREBY CERTIFY that I am the duly qualified Village Clerk of the Village of Willow Springs, Cook County, Illinois, and that as such Clerk, I do have charge of and custody of the books and records of the Village of Willow Springs, Cook County, Illinois.

I DO HEREBY FURTHER CERTIFY that the foregoing is a full, true and correct copy of **ORDINANCE NO. 2010-O-1, "AN ORDINANCE APPROVING AN AGREEMENT BETWEEN THE VILLAGE OF WILLOW SPRINGS AND COMCAST"** adopted and approved by the Village President and Board of Trustees of the Village of Willow Springs, Illinois on January 14, 2010.

**IN WITNESS WHEREOF**, I have hereunto affixed my hand and the Corporate Seal of the Village of Willow Springs, Cook County, Illinois this 14<sup>th</sup> day of January, 2010.



  
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Adena Baskovich, Village Clerk  
Village of Willow Springs, Cook County, Illinois

**CABLE TELEVISION FRANCHISE AGREEMENT  
BY AND BETWEEN  
The  
VILLAGE OF WILLOW SPRINGS  
And  
COMCAST OF ILLINOIS IV, INC.**

This Franchise Agreement (hereinafter, the “Agreement” or “Franchise Agreement”) is made between the Village of Willow Springs, Illinois (hereinafter, the “Village”) and Comcast of Illinois IV, Inc., (hereinafter, “Grantee”) this 17<sup>th</sup> day of December, 2009 (the “Effective Date”).

The Village, having determined that the financial, legal, and technical abilities of the Grantee are reasonably sufficient to provide the services, facilities, and equipment necessary to meet the future cable-related needs of the community, desires to enter into this Franchise Agreement with the Grantee for the construction, operation and maintenance of a Cable System on the terms and conditions set forth herein.

This agreement is entered into by and between the parties under the authority of and shall be governed by the Cable Act.

**SECTION 1: Definition of Terms**

For the purpose of this Franchise Agreement, capitalized terms, phrases, words, and abbreviations shall have the meanings ascribed to them in the Cable Act, unless otherwise defined herein.

"Cable Act" or "Act" means the Cable Communications Policy Act of 1984, as amended by the Cable Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996, 47 U.S.C. §§ 521 et seq., as the same may be amended from time to time.

"Cable Service" or “Service” means the one-way transmission to Subscribers of Video Programming or Other Programming Service and Subscriber interaction, if any, which is required for the selection or use of such Video Programming or other programming service.

“Cable System” or “System,” has the meaning set forth in 47 U.S.C. § 522 of the Cable Act, and means Grantee's facilities, 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 Franchise Area, but such term does not include (i) a

facility that serves only to re-transmit the television signals of one or more television broadcast stations; (ii) a facility that serves Subscribers without using any public right-of-way, (iii) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, as amended, except that such a facility shall be considered a Cable System (other than for purposes of section 621(c) of the Cable Act) to the extent such facility is used in the transmission of Video Programming directly to Subscribers, unless the extent of such use is solely to provide Interactive On-Demand Services; (iv) an open video system that complies with section 653 of the Cable Act; or (v) any facilities of any electric utility used solely for operating its electric utility systems.

“Channel” or “Cable Channel” means 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 the Federal Communications Commission by regulation.

“Customer” means a Person who lawfully receives and pays for Cable Service with the Grantee’s express permission.

“FCC” means the Federal Communications Commission, or successor governmental entity thereto.

“Franchise” means the initial authorization, or renewal thereof, issued by the Village, whether such authorization is designated as a franchise, agreement, permit, license, resolution, contract, certificate, ordinance or otherwise, which authorizes the construction and operation of the Cable System.

“Franchise Agreement” or “Agreement” shall mean this Agreement and any amendments or modifications hereto.

“Franchise Area” means the present legal boundaries of the Village as of the Effective Date, and shall also include any additions thereto, by annexation or other legal means as provided in this Agreement.

“Grantee” shall mean Comcast of Illinois IV, Inc.

“Gross Revenue” means the Cable Service revenue received by the Grantee from the operation of the Cable System in the Franchise Area to provide Cable Services, calculated in accordance with generally accepted accounting principles. Cable Service revenue includes monthly basic, premium and pay-per-view video fees, advertising and home shopping revenue, installation fees and equipment rental fees. Gross revenues shall also include such other revenue sources directly related to Cable Service delivered over the Cable System as may hereafter develop, provided that such revenues, fees, receipts, or charges are deemed lawful and to be included in the gross revenue base for purposes of computing the Franchising Authority’s permissible franchise fee under the Cable Act, as amended from time to time. Gross Revenue shall not include refundable deposits, bad debt, investment income, late fees, programming launch support payments, advertising sales commissions and third party agency fees, nor any taxes, fees or assessments

imposed or assessed by any governmental authority. Gross Revenues shall include amounts collected from Subscribers for Franchise Fees pursuant to *City of Dallas, Texas v. F.C.C.*, 118 F.3d 393 (5<sup>th</sup> Cir. 1997), and amounts collected from non-Subscriber revenues in accordance with the Court of Appeals decision resolving the case commonly known as the “Pasadena Decision,” *City of Pasadena, California et. al., Petitions for Declaratory Ruling on Franchise Fee Pass Through Issues, CSR 5282-R, Memorandum Opinion and Order, 16 FCC Rcd. 18192 (2001)*, and *In re: Texas Coalition of Cities for Utility Issues v. F.C.C.*, 324 F.3d 802 (5<sup>th</sup> Cir. 2003).

“Initial Franchise Service Area” means that portion of the Franchise Area served by the Grantee’s Cable System as of the Effective Date of this Franchise Agreement.

“Person” means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for profit, but shall not mean the Village.

“Public Way” shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, way, lane, public way, drive, circle or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or easements dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Village in the Franchise Area, which shall entitle the Village and the Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System. Public Way shall also mean any easement now or hereafter held by the Village within the Franchise Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the Village and the Grantee to the use thereof for the purposes of installing, operating, and maintaining the Grantee’s Cable System over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Cable System.

“Village” means the Village of Willow Springs, Illinois or the lawful successor, transferee, designee, or assignee thereof.

## **SECTION 2: Grant of Authority**

2.1. The Village hereby grants to the Grantee a nonexclusive Franchise authorizing the Grantee to construct and operate a Cable System in the Public Ways within the Franchise Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in any Public Way such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the Cable System, and to provide such services over the Cable System as may be lawfully allowed.

2.2. Term of Franchise. The term of the Franchise granted hereunder shall be ten (10) years from the Effective Date, unless the Franchise is renewed or is lawfully

terminated in accordance with the terms of this Franchise Agreement and/or applicable law. Upon passage and approval of this Franchise Agreement, the Parties acknowledge that this Franchise Agreement is intended to replace all existing franchise agreements – including the prior Franchise with the Grantee, regardless of whether said prior Franchise or franchise agreements are in effect.

2.3. Renewal. Any renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, as amended.

2.4. Police Powers. Nothing in this Franchise Agreement shall be construed as an abrogation by the Village of any of its police powers to adopt and enforce generally applicable ordinances deemed necessary for the health, safety, and welfare of the public, and the Grantee shall comply with all generally applicable laws and ordinances enacted by the Village pursuant to such police power.

2.5. Reservation of Authority. Nothing in this Franchise Agreement shall (A) abrogate the right of the Village to perform any public works or public improvements of any description, (B) be construed as a waiver of any codes or ordinances of general applicability promulgated by the Village, or (C) be construed as a waiver or release of the rights of the Village in and to the Public Ways.

2.6. Competitive Equity.

2.6.1. In the event the Village grants an additional Franchise to use and occupy the public right-of-way for the purposes of operating a Cable System, the additional Franchise shall only be granted in accordance with applicable law and regulation, including the Illinois Level Playing Field Statute, 65 ILCS 5/11-42-11.

2.6.2. In the event an application for a new cable television franchise or other similar authorization is filed with the Village proposing to serve the Franchise Area, in whole or in part, the Village shall serve or require to be served a copy of such application upon any existing Company or incumbent cable operator by registered or certified mail or via nationally recognized overnight courier service.

2.6.3. During the term of this Franchise Agreement and any extension or renewal thereof, no application fee or Security Fund shall be required of the Grantee for any permit required by the Village; provided, however that Grantee shall have timely made all payments to the Village pursuant to Section 5.1 of this Franchise Agreement.

### **SECTION 3: Construction and Maintenance of the Cable System**

3.1. Except as may be otherwise provided in this Franchise Agreement, Grantee shall comply with all generally applicable policies and procedures of the Village as set forth in Section 5-5-1 *et seq.*, of the Village Code, with respect to the occupancy and use of the Public Way by all users of the Public Way, as amended from time to time.

3.2. Aerial and Underground Construction. At the time of Cable System construction, if all of the transmission and distribution facilities of all of the respective

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

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

3.4. The Grantee shall not be required to relocate its facilities unless it has been afforded at least thirty (30) days notice of the necessity to relocate its facilities. Upon adequate notice the Grantee shall provide a written estimate of the cost associated with the work necessary to relocate its facilities. The Grantee shall not be required to perform the relocation work until it has received payment for the relocation work.

#### **SECTION 4: Service Obligations**

4.1 Customer Service Obligations. Grantee and Village acknowledge that the customer service standards and customer privacy protections are set forth in the Cable and Video Customer Protection Law, 220 ILCS 5/22-501 *et seq.*, and Section 5-7-1 *et seq.* of the Village Code. Enforcement of such standards and penalties for non-compliance with such standards shall be consistent with the Cable and Video Customer Protection Law, 220 ILCS 5/22-501 *et seq.*

4.2. General Service Obligation. The Grantee shall make Cable Service available beyond the Initial Franchise Service Area to every residential dwelling unit within the Franchise Area where the minimum density is at least thirty (30) dwelling units per mile and within one (1) mile of the existing Cable System's technically feasible connection point. Subject to the density requirement, Grantee shall offer Cable Service to all new homes or previously unserved homes located within 125 feet of the Grantee's distribution cable.

4.2.1. The Grantee may elect to provide Cable Service to areas not meeting the above density and distance standards. The Grantee may impose an additional

charge in excess of its regular installation charge for any service installation requiring a drop in or line extension in excess of the above standards. Any such additional charge shall be computed on a time plus materials basis plus a reasonable rate of return.

4.2.2. Grantee shall not deny access to its Cable Service within the Village because of the income or minority status of the residents within the Village.

4.3. Programming. The Grantee agrees to provide cable programming services in the following broad categories:

Children's	General Entertainment	Family Oriented
Ethnic/Minority	Sports	Weather
Arts, Culture and Performing Arts	News & Information	Educational

Pursuant and subject to federal law, all Video Programming decisions, excluding PEG Access Programming, are at the sole discretion of the Grantee.

4.4. New Developments. The Village shall provide the Grantee with written notice of the issuance of building or development permits within the Franchise Area for projects requiring undergrounding of cable facilities. The Village agrees to require the builder or developer, as a condition of issuing the permit, to give the Grantee access to open trenches for deployment of cable facilities and at least sixty (60) business days written notice of the date of availability of open trenches.

4.5. Annexations. The Village shall notify the Grantee of any and all planned developments within the Franchise Area or those located in areas expected to be annexed. Such notices shall be provided at the time of notice to all other utilities or like occupants of the Village's rights-of-way. The Village shall provide summaries of all planned developments in the Village or the areas expected to be annexed. Said notice is to allow the Grantee sufficient foresight into the future demands on its design, engineering, construction and capital resources. Should the Village fail to provide advance notice of such developments the Grantee shall be allowed an adequate time to prepare, plan and provide a detailed report as to the timeframe for it to construct its facilities and provide the services required under this Franchise.

4.6. Service to School Buildings and Governmental Facilities.

4.6.1. Service to School Buildings. The Village and the Grantee acknowledge the provisions of 220 ILCS 5/22-501(f), whereby the Grantee shall provide complimentary basic Cable Service and a free standard installation at one outlet to each State accredited K-12 public and private school, not including "home schools," located in the Franchise Area within one hundred twenty five feet (125) of the Grantee's distribution cable.

4.6.2. Service to Governmental Facilities. The Village and the Grantee acknowledge the provisions of 220 ILCS 5/22-501(f), whereby the Grantee shall provide complimentary basic Cable Service and a free standard installation at one outlet to each municipal building located in the Franchise Area within one hundred twenty five (125)

feet of Grantee's distribution cable. "Municipal buildings" are those buildings owned or leased by the Village for government administrative purposes, and shall not include buildings owned by Village but leased to third parties or buildings such as storage facilities at which government employees are not regularly stationed.

4.7. Emergency Alerts. At all times during the term of this Franchise Agreement, the Grantee shall provide and maintain an "Emergency Alert System" ("EAS") consistent with applicable Federal law and regulation – including 47 C.F.R., Part 11 and the "State of Illinois Emergency Alert System State Plan" – as may be amended from time to time. The Village agrees to indemnify and hold the Grantee harmless from any damages or penalties arising out of the negligence of the Village, its employees or agents in using such system.

## **SECTION 5: Oversight and Regulation by Village**

5.1. Franchise Fees. The Grantee shall pay to the Village a Franchise Fee in an amount equal to five percent (5%) of annual Gross Revenues received from the operation of the Cable System to provide Cable Service in the Franchise Area; provided, however, that Grantee shall not be compelled to pay any higher percentage of fees than any other video service provider, under state authorization or otherwise, providing service in the Franchise Area. The payment of Franchise Fees shall be made on a quarterly basis and shall be due forty-five (45) days after the close of each calendar quarter. If mailed, the Franchise Fee shall be considered paid on the date it is postmarked. Each Franchise Fee payment shall be accompanied by a report prepared by a representative of the Grantee showing the basis for the computation of the franchise fees paid during that period. Any undisputed Franchise Fee payment which remains unpaid in whole or in part, after the date specified herein shall be delinquent. For any delinquent Franchise Fee payments, Grantee shall make such payments including interest at the prime lending rate as quoted by Chase Bank U.S.A or its successor, from the time of the discovery of the delinquent payment until the date paid. Any undisputed overpayments made by Grantee to the Village shall be returned or credited upon discovery of such overpayment and shall be payable within thirty (30) days of the receipt of written notice from Grantee.

5.1.1. Change in Amount. The Parties acknowledge that, at present, the Cable Act limits the Village to collection of a maximum permissible Franchise Fee of five percent (5%) of Gross Revenues. If, during the term of this Agreement, the Cable Act is modified so that the Village would otherwise be authorized to collect a Franchise fee at a rate greater than five percent (5%) of Gross Revenues, the Village may unilaterally amend this Agreement to increase the required percentage to be paid by the Grantee to the Village up to the amount permitted by the Cable Act, provided that: (i) such amendment is competitively neutral; (ii) the Village conducts a public hearing on the proposed amendment; (iii) the Village approves the amendment by ordinance; and (iv) the Village notifies Grantee at least ninety (90) days prior to the effective date of such an amendment. In the event a change in state or federal law reduces the maximum permissible franchise fee percentage that may be collected, the parties agree the Grantee shall reduce the percentage of franchise fees collected to the lower of: i) the maximum permissible franchise fee percentage; ii) the lowest franchise fee percentage paid by than

any other video service provider, under state authorization or otherwise, providing service in the Franchise Area or any other cable provider granted a cable franchise by the Village pursuant to Title 47; or, iii) such franchise fee percentage as may be approved by the Village, provided that: (a) such amendment is competitively neutral; (b) the amendment is in compliance with the change in state or federal law; (c) the Village approves the amendment by ordinance; and (d) the Village notifies Grantee at least ninety (90) days prior to the effective date of such an amendment.

5.2. Franchise Fees Subject to Audit.

5.2.1. Upon reasonable prior written notice, during normal business hours at Grantee's principal business office, the Village shall have the right to inspect the Grantee's financial records used to calculate the Village's Franchise Fees; provided, however, that any such inspection shall take place within two (2) years from the date the Village receives such payment, after which period any such payment shall be considered final. The Village and/or its designee may be required to execute a non-disclosure agreement with the Grantee prior to inspection of the Grantee's financial records.

5.2.2. Upon the completion of an independent audit by the Village, the Village shall provide to the Grantee a final report setting forth the Village's findings in detail, including any and all substantiating documentation. In the event of an alleged underpayment, the Grantee shall have thirty (30) days from the receipt of the report to provide the Village with a written response agreeing to or refuting the results of the audit, including any substantiating documentation. Based on these reports and responses, the parties shall agree upon a "Finally Settled Amount." For purposes of this Section, the term "Finally Settled Amount(s)" shall mean the agreed upon underpayment, if any, to the Village by the Grantee, or overpayment to the Village by the Grantee as the case may be, as a result of any such audit. If the parties cannot agree on a "Final Settlement Amount," either party may bring an action to have the disputed amount determined by a court of law.

5.2.3. Any "Finally Settled Amount(s)" due to the Village as a result of such audit shall be paid to the Village by the Grantee within thirty (30) days from the date the parties agree upon the "Finally Settled Amount." Any overpayment by the Grantee to the Village shall be credited against subsequent Franchise Fee payments by the Grantee to the Village consistent with Section 622(b) of the Cable Act as amended from time to time, until such time as the overpayment is fully credited; or shall be paid by the Village to the Grantee within thirty (30) days from the date the parties agree upon the "Finally Settled Amount" in the event no subsequent Franchise Fee payments are due to the Village. In the event Grantee does not pay the "Finally Settled Amount" within thirty (30) days, Grantee shall be charged and shall pay, in addition to the amount due, interest on the amount due equal to the prevailing prime rate interest compounded from the due date for payment of the "Finally Settled Amount."

5.2.4. Once the parties agree upon a "Finally Settled Amount" and such amount is paid by or credited to the Grantee, the Village shall have no further rights to

audit or challenge the payment for that period. The Village shall bear the expense of its audit of the Grantee's books and records.

5.3. Proprietary Information. Notwithstanding anything to the contrary set forth in this Agreement, the Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. The Village agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to those employees, representatives, and agents of the Village that have a need to know in order to enforce this Franchise Agreement and who agree to maintain the confidentiality of all such information. For purposes of this Section, the terms "proprietary or confidential" include, but are not limited to, information relating to the Cable System design, customer lists, marketing plans, financial information unrelated to the calculation of Franchise Fees or rates pursuant to FCC rules, or other information that is reasonably determined by the Grantee to be competitively sensitive. Grantee may make proprietary or confidential information available for inspection but not copying or removal by the Franchise Authority's representative. In the event that the Village has in its possession and receives a request under a state "sunshine," public records, or similar law for the disclosure of information the Grantee has designated as confidential, trade secret or proprietary, the Village shall abide by Illinois State law and simultaneously notify Grantee of such request and cooperate with Grantee in opposing such request to the extent permitted by law and at the Grantee's expense. Grantee shall indemnify and defend the Village from and against any claims arising from the Village's opposition to disclosure of any information Grantee designates as proprietary or confidential.

#### **SECTION 6: Transfer of Cable System or Franchise or Control of Grantee**

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

#### **SECTION 7: Insurance and Indemnity**

7.1. Insurance. Throughout the term of this Franchise Agreement, the Grantee shall, at its own cost and expense, maintain Commercial General Liability Insurance and provide the Village certificates of insurance designating the Village and its officers,

boards, commissions, councils, elected officials, agents and employees as additional insureds and demonstrating that the Grantee has obtained the insurance required in this Section. Such policy or policies shall be in the minimum amount of one million dollars (\$1,000,000.00) for bodily injury or death to any one person, and three million dollars (\$3,000,000.00) for bodily injury or death of any two or more persons resulting from one occurrence, and one million dollars (\$1,000,000.00) for property damage resulting from any one accident. Such policy or policies shall be non-cancelable except upon thirty (30) days prior written notice to the Village. The Grantee shall provide workers' compensation coverage in accordance with applicable law. The Grantee shall indemnify and hold harmless the Village from any workers compensation claims to which the Grantee may become subject during the term of this Franchise Agreement.

7.2. Indemnification. The Grantee shall indemnify, defend and hold harmless the Village, its officers, employees, and agents from and against any liability or claims resulting from property damage or bodily injury (including accidental death) that arise out of the Grantee's construction, operation, maintenance or removal of the Cable System, including, provided that the Village shall give the Grantee written notice of its obligation to indemnify and defend the Village within ten (10) business days of receipt of a claim or action pursuant to this Section. If the Village determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the Village.

7.2.1. The Grantee shall not indemnify the Village for any liabilities, damages, costs or expense resulting from the willful misconduct or negligence of the Village, its officers, employees and agents.

#### **SECTION 8: Technical Standards**

8.1. Technical Standards. The Grantee shall comply with all applicable technical standards of the FCC as published in 47 C.F.R., Part 76, Subpart K, as amended from time to time.

#### **SECTION 9: Enforcement of Franchise**

9.1. Notice of Violation or Default. In the event the Village believes that the Grantee has not complied with the material terms of the Franchise, it shall notify the Grantee in writing with specific details regarding the exact nature of the alleged noncompliance or default.

9.2. Grantee's Right to Cure or Respond. The Grantee shall have forty-five (45) days from the receipt of the Village's written notice: (A) to respond to the Village, contesting the assertion of noncompliance or default; or (B) to cure such default; or (C) in the event that, by nature of the default, such default cannot be cured within the forty-five (45) day period, initiate reasonable steps to remedy such default and notify the Village of the steps being taken and the projected date that the cure will be completed.

9.3. Enforcement. Subject to applicable federal and state law, and pursuant to the provisions of 9.2 herein, in the event the Village determines that the Grantee is in

default of any material provision of the Franchise, the Village may seek specific performance of any provision that reasonably lends itself to such remedy as an alternative to damages, or seek other equitable relief.

9.4. Technical Violation. The Village agrees that it is not its intention to subject the Grantee to penalties, fines, forfeitures or revocation of the Franchise for so-called “technical” breach(es) or violation(s) of the Franchise, which shall include, but not be limited, to the following:

9.4.1. in instances or for matters where a violation or a breach of the Franchise by the Grantee was good faith error that resulted in no or minimal negative impact on the Customers within the Franchise Area; or

9.4.2. where there existed circumstances reasonably beyond the control of the Grantee and which precipitated a violation by the Grantee of the Franchise, or which were deemed to have prevented the Grantee from complying with a term or condition of the Franchise.

## **SECTION 10: PEG ACCESS**

10.1 PEG Capacity. The Grantee shall provide capacity for the Village’s noncommercial public, educational and governmental access (“PEG”) programming through one Channel (the “Channel”) on the Grantee’s Cable System. Unless otherwise agreed to by the Village and the Grantee to the extent required by applicable law, the Channel may be carried on the Grantee’s basic digital service tier. The Village’s PEG programming shall be provided consistent with Section 611 of the Cable Act, as amended from time to time.

10.1.1. When demand for a second channel has occurred, the Village may request at its sole discretion and the Grantee shall provide, a second PEG channel, upon 180 days advance written notice by the Village and sufficient proof that the current channel use is inadequate for all programming offered. “Sufficient proof” shall include a verified program log of all original, non-repeat, first-run, locally produced programs that are carried on the existing channel for the prior six month period during the times of noon to midnight. In the event that 80% of the programming on the channel meets the criteria of being original, non-repeat, first-run locally produced programming, Grantee shall provide a second channel.

10.1.2. Grantee Use of Unused Time. Because the City and Grantee agree that a blank or under utilized Access Channel is not in the public interest, in the event the City does not completely program a Channel, Grantee may utilize the Channel for its own purposes. Grantee may program unused time on the Channel subject to reclamation from the City upon no less than sixty (60) days notice. The programming of the Access Channel with text messaging or playback of previously aired programming shall not constitute fallow time. Text messaging containing out of date or expired information for a period of thirty (30) days shall be considered unused time. A programming schedule that contains playback of previously aired programming that has

not been updated for a period of ninety (90) days shall be considered unused time. Unused time shall be considered to be a period of time, in excess of six (6) hours, where no community produced programming of any kind can be viewed on an access Channel. Unused time shall not include periods of time where programming cannot be viewed that are caused by technical difficulties, transition of broadcast media, signal testing, replacement or repair of equipment, or installation or relocation of facilities.

10.2 Origination Point. At such time that the Village determines that it wants the capacity to allow subscribers in the Village to receive public, educational and/or governmental access programming (video and character generated) which may originate from Schools and/or Village facilities; or at such time that the Village determines that it wants to establish or change a location from which public, educational and/or governmental access programming is originated; or in the event the Village wants to upgrade the connection to the Grantee from an existing signal point of origination, the Village will give the Grantee written notice detailing the point of origination and the capability sought by the Village. The Grantee agrees to submit a cost estimate to implement the Village's plan within a reasonable period of time. After an agreement for the Village to reimburse the Grantee for its expenditure, the Grantee will implement any necessary system changes within a reasonable period of time.

10.3. The Grantee does not relinquish its ownership of or ultimate right of control over a channel by designating it for PEG use. However, the PEG channel is, and shall be, operated by the Village, and the Village may at any time allocate or reallocate the usage of the PEG channel among and between different non-commercial uses and Users.

## **SECTION 11: Miscellaneous Provisions**

11.1. Force Majeure. The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the Franchise), where such noncompliance or alleged defaults occurred or were caused by strike, riot, war, earthquake, flood, tidal wave, unusually severe rain or snow storm, hurricane, tornado or other catastrophic act of nature, labor disputes, failure of utility service necessary to operate the Cable System, governmental, administrative or judicial order or regulation or other event that is reasonably beyond the Grantee's ability to anticipate or control. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which the Grantee's cable or equipment is attached, as well as unavailability of materials or qualified labor to perform the work necessary.

11.2. Notice. Any notification that requires a response or action from a party to this franchise within a specific time-frame, or that would trigger a timeline that would affect one or both parties' rights under this franchise, shall be in writing and shall be sufficiently given and served upon the other party by hand delivery, first class mail, registered or certified, return receipt requested, postage prepaid, or by reputable overnight courier service and addressed as follows:

To the Village:

Village of Willow Springs  
One Village Circle  
Willow Springs, Illinois 60501  
ATTN: Village Administrator

To the Grantee:

Comcast  
155 Industrial Drive  
Elmhurst, Illinois 60126  
ATTN: Director of Government Affairs

Recognizing the widespread usage and acceptance of electronic forms of communication, emails and faxes will be acceptable as formal notification related to the conduct of general business amongst the parties to this contract, including but not limited to programming and price adjustment communications. Such communication should be addressed and directed to the person of record as specified above.

11.3. Entire Agreement. This Franchise Agreement embodies the entire understanding and agreement of the Village and the Grantee with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, ordinances, understandings, negotiations and communications, whether written or oral. All ordinances or parts of ordinances that are in conflict with or otherwise impose obligations different from the provisions of this Franchise Agreement are superseded by this Franchise Agreement.

11.3.1. The Village may adopt a cable television/video service provider regulatory ordinance that complies with applicable law, provided the provisions of any such ordinance adopted subsequent to the Effective Date of this Franchise Agreement shall not apply to the Grantee during the term of this Franchise Agreement.

11.4. Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Franchise Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.

11.5. Governing Law. This Franchise Agreement shall be deemed to be executed in the State of Illinois, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of Illinois and/or Federal law, as applicable.

11.6. Modification. No provision of this Franchise Agreement shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the Village and the Grantee, which amendment shall be authorized on behalf of the Village through the adoption of an appropriate resolution or order by the Village, as required by applicable law.

11.7. No Third-Party Beneficiaries. Nothing in this Franchise Agreement is intended to confer third-party beneficiary status on any person, individual, corporation or member of the public to enforce the terms of this Franchise Agreement.

11.8. No Waiver of Rights. Nothing in this Franchise Agreement shall be construed as a waiver of any rights, substantive or procedural; Grantee may have under Federal or state law unless such waiver is expressly stated herein.

11.9 Venue. In the event legal proceedings of any kind arise in connection with this Agreement it shall be in the Circuit Court of Cook County, Illinois. Any matter brought pursuant to the jurisdiction of the federal court shall be brought in the United States District Court of the Northern District of Illinois.

IN WITNESS WHEREOF, this Franchise Agreement has been executed by the duly authorized representatives of the parties as set forth below, as of the date set forth below:

**For the Village of Willow Springs:**

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

Name: Alan Nowaczyk

Title: Village President

Date: December 17, 2009

**For Comcast of Illinois IV, Inc.:**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_