Time Warner Cable Business Class Optical Access Service Agreement Cover Sheet

This Business Class Optical Access Service Agreement is made by and between Time Warner Cable, Raleigh Division ("TWC") and the Customer below ("Customer"). Contract#

Customer: City of Durham		Contact: Martha Lester-Harris
Address: 101 City Hall Plaza USA		
City: Durham	State: NC	Zip: 27701
Telephone #: (919) 560-4122 ext. 33229	Fax #: _____	E-mail: martha.lester@durhamnc.gov

TWC:		Contact: Ken Bearden
Address: 101 Innovation Ave		
City: Morrisville	State: NC	Zip: 27560
Telephone #: (919) 654-7647	Fax #: (919) 882-8024	E-mail: kenneth.bearden@twcable.com

Services: Subject to the terms and conditions of this Agreement, TWC shall provide Customer with a dedicated fiber optic network as detailed in Exhibit A. Customer must purchase any additional capacity separately.

Monthly Recurring Fees: $12,082

Standard Installation Fee: NA

The fees set forth above do not include applicable taxes and other similar charges (as described more fully in the Time Warner Cable Business Class Optical Access Service Agreement Terms and Conditions) which may be part of the fee charged by TWC hereunder and which shall be the responsibility of the Customer as set forth in this Agreement.

Initial Term of Service: 36 months .

****SECURITY WAIVER: IF YOU ELECT NOT TO PURCHASE TWC'S BUSINESS CLASS MANAGED SECURITY OFFERING, YOU ACKNOWLEDGE THAT THE SERVICES YOU ARE RETAINING MAY NOT BE SECURE AND YOU HEREBY WAIVE ANY CLAIMS AGAINST TWC RELATING TO THE SECURITY OF THE SERVICES HEREUNDER.****

THIS BUSINESS CLASS OPTICAL ACCESS SERVICE AGREEMENT SHALL AT ALL TIMES BE SUBJECT TO THE TERMS AND CONDITIONS, LOCATED AT http://raleigh.twcbc.com/policy/legal.cfm (AS SUCH AGREEMENT MAY BE MODIFIED FROM TIME TO TIME AS SPECIFIED THEREIN), WHICH TERMS AND CONDITIONS ARE HEREBY INCORPORATED HEREIN BY REFERENCE AND MADE A PART OF THIS AGREEMENT FOR ALL PURPOSES. BY EXECUTING THIS AGREEMENT, CUSTOMER ACKNOWLEDGES THAT CUSTOMER HAS READ AND AGREES TO BE BOUND BY SUCH TERMS AND CONDITIONS.

CUSTOMER:	**TIME WARNER CABLE**
By: _____	By: _____
Name: Thomas Bonfield	Name: David Lynch
Title: City Manager	Title: Vice President of Sales and Marketing
Date: _____	**Date:** 3/30/11

Exhibit A

	Site	Address	BW	MRC
1	Northgate Police	1058 W. Club Blvd (Northgate Mall)	10M	$625
2	Police Substation # 1	915 Holloway St	10M	$625
3	Police Substation # 2	5285 N Roxboro Rd	10M	$625
4	Police Substation # 3	8 Consultant Pl	10M	$625
5	Police Substation # 4	3022 Fayetteville St.	10M	$625
6	Police Substation # 5	516 Rigsbee Ave	10M	$625
7	Police HQ	505 W. Chapel Hill St	5M DIA	$1,001
8	Fire Admin	2008 East Club Blvd. 27704	10M	$625
9	Fire Station # 2	1001 Ninth Street	5M	$479
10	Fire Station # 3	822 N. Miami Blvd	5M	$479
11	Fire Station # 4	1818 Riddle Road	5M	$479
12	Fire Station # 5	2212 Chapel Hill Road	5M	$479
13	Fire Station # 6	3700 Swarthmore	5M	$479
14	Fire Station # 7	3919 N. Duke Street	5M	$479
15	Fire Station # 8	225 Lick Creek Lane	5M	$479
17	Fire Station # 10	1805 Cole Mill Road	5M	$479
18	Fire Station # 11	2800 W. Cornwallis Road	5M	$479
19	Fire Station # 12	1230 Carpenter-Fletcher	5M	$479
20	Fire Station # 13	2901 S. Miami Blvd	5M	$479
21	Fire Station # 14	1327 Umstead Road	5M	$479
22	Fire Station # 15	2060 Torredge Road	5M	$479
23	Fire Station # 16	6303 Farrington Road	5M	$479
			Total MRC Charged to 911	$12,082

Time Warner Cable Business Class Optical Access Service Agreement Terms and Conditions

These terms and conditions, taken together with the Time Warner Cable Optical Access Service Agreement Cover Sheet signed by and between TWC and Customer ("Cover Sheet") shall constitute the agreement between TWC and Customer ("Agreement"). In consideration of the mutual promises and agreements made herein and intending to be legally bound, the parties agree as follows:

1. **SERVICE.** Subject to the terms and conditions of this Agreement, TWC shall provide Customer with a dedicated "Optical Access" service connection between Customer's facility and TWC's (or a TWC affiliate's) facility as further described on the Cover Sheet (the "Service"). TWC shall use commercially reasonable efforts to provide the Service 7 days a week, 24 hours a day, excluding scheduled maintenance, required repair and events beyond TWC's reasonable control. TWC's provision of the Service is subject to availability.

2. **INSTALLATION.** Customer shall obtain and maintain throughout the Term (as defined in Section 5 below) such consents (including without limitation landlord and land owner consents) as are necessary to timely permit, and shall timely permit, TWC personnel to install, deliver, operate and maintain the Service and Equipment as contemplated herein at Customer's facilities. Customer shall permit TWC to access the Customer facilities at any time as needed to install, configure, upgrade, maintain or remove the Equipment and other service components collocated at Customer's facilities. Customer shall make and maintain throughout the Term all site preparations necessary to permit the installation, maintenance, and operation of the Service and any Equipment (as defined below) as specified by TWC. Provided that Customer properly performs all necessary site preparation and provides TWC with all required consents, TWC shall use commercially reasonable efforts to install the Service in accordance with a mutually agreed upon schedule. TWC shall provide Customer with a completion notice ("Completion Notice") upon completion of the installation of the Service. The Completion Notice will detail the successful ping of each customer premise device ("TWC Testing"). Upon submission of the Completion Notice by TWC to Customer, TWC will invoice Customer, and Customer shall incur its applicable payment obligations, in accordance with Section 6 of this Agreement. Interconnection of the Service and Equipment with Customer's equipment will be performed by Customer. If additional testing, other than the TWC Testing, is required, TWC reserves the right to document and incorporate a change order, if appropriate, but TWC will not delay invoicing, and Customer's payment obligation shall not be delayed.

3. **SUPPORT & MAINTENANCE.** TWC shall use commercially reasonable efforts to maintain the TWC-provided and installed cabling, routers and other TWC-installed equipment, if any, (collectively, the "Equipment") used by TWC to provide the Service. TWC shall provide a telephone number and email address for inquiries and remote problem support for the Service. All such Customer support shall be provided to Customer's help desk personnel only. Customer is responsible for interfacing with its employees and end users. In no event shall TWC be responsible for providing such support for any network, equipment or software not provided and installed by TWC under this Agreement or for issues or problems beyond its direct control. Customer agrees to provide routine operational Service support for Equipment and service components collocated at Customer's facility, including without limitation by performing reboots, as requested by TWC.

4. **CUSTOMER OBLIGATIONS.** Customer's use of the Service (including all content transmitted via the Service) shall comply with all applicable laws and regulations, the terms of this Agreement, and any Terms of Use (which are hereby incorporated herein by this reference and made a part of this Agreement for all purposes). "Terms of Use" means all Service policies, including without limitation acceptable use policies, and other terms and conditions established by TWC and available on the TWC web site, at http://help.twcable.com/html/policies.html, as may be modified from time to time by TWC. Customer agrees not to resell or make any use of the Service other than for Customer's internal business purposes. Customer agrees to use the Service solely for transmitting data in IP form. Customer shall maintain the Equipment free and clear of all liens and encumbrances and shall be responsible for loss or damage to the Equipment while at Customer's facilities. As between the parties, Customer is solely responsible for (a) all use (whether or not authorized) of the Service, which use shall be deemed Customer's use for purposes of this Agreement; and (b) all content that is stored or transmitted via the Service. Customer shall not upload, post, transmit or otherwise make available on or via the Service any material (including any message or series of messages) that violates or infringes in any way upon the rights of others, that is unlawful, threatening, abusive, obstructive, harassing, libelous, invasive of privacy or publicity rights, that in the circumstances would be obscene or indecent, that constitutes hate speech, that is otherwise offensive or objectionable, or that encourages conduct that would constitute a criminal offense, give rise to civil liability or otherwise violate any law or regulation. TWC may remove, or demand the removal of, content that in its judgment violates these standards. Customer agrees to conform its equipment and software to TWC's then-current network specifications and system requirements for the Service.

5. **TERM.** The Agreement shall be in effect commencing on the date signed by both parties on the Cover Sheet (the "Effective Date") and continuing through the Initial Term of Service set forth on the Cover Sheet, and unless terminated earlier in accordance with this Agreement, shall thereafter automatically renew on a month-to-month basis unless either party notifies the other party at least thirty (30) days prior to the expiration of the then-current term of such party's intent not to renew (the Initial Term and any renewal term collectively referred to as the "Term"). As of the date the Cover Sheet is signed by Customer, Customer is deemed to have ordered the Services and approved of TWC's initiation of the installation and construction process. Customer's termination rights thereafter shall be as set forth in Section 9 below.

6. **PAYMENT.** Customer agrees to pay TWC the one-time Service installation fee and monthly recurring Service fees (collectively the "Service Charges") set forth on the Cover Sheet in accordance with the following payment terms: Service Charges will be billed to Customer monthly in advance, in accordance with TWC's regular billing schedule and are payable within thirty (30) days after the date of invoice. TWC shall have the right to increase Service Charges after the Initial Term upon thirty (30) days advance written notice to Customer. TWC may charge a late fee for all overdue amounts. The late fee will be the lesser of 1½% or the highest rate chargeable by law. Customer shall also be responsible for all costs of collection (including reasonable attorneys' fees) to collect overdue amounts. In addition to the foregoing, and all other available remedies, TWC may discontinue Customer's access to the Service in whole or in part, until such overdue amounts, together with interest, are paid. TWC may require a security deposit, letter of credit, advance payment for Service or other reasonable assurances of payment from Customer.

In the event use, sales or other taxes or government charges are applicable, Customer shall be responsible for all use, sales and other taxes and governmental charges applicable to the Service (which taxes and charges are not included in the Service Charges), except for taxes payable on TWC's net income. Customer shall pay all federal, state and local taxes, fees, charges, surcharges or similar exactions imposed on the Services that are the subject of this Agreement including but not limited to state and local sales and use taxes, telecommunications taxes, federal and state universal service fund fees and state and local regulatory fees to the extent applicable. Further, TWC shall have the right to recover from Customer the amount of any state or local fees or taxes imposed directly on TWC , TWC's services, or tax or fees measured on TWC's receipts, in the form of a surcharge included on Customer's invoice. TWC shall be responsible for and shall pay all taxes measured by TWC's net income. To the extent that a dispute arises as to which party is liable for taxes under this Agreement, Customer shall bear the burden of proof in showing that the tax is imposed upon TWC's net income. This burden may be satisfied by Customer producing written documentation from the jurisdiction imposing the tax indicating that the tax is based on TWC's net income. Customer shall be responsible for providing TWC any and all documentation substantiating a claim for exemption from taxes or fees prior to the date that services are first provided under this agreement. To the extent such documentation is held invalid for any reason, Customer agrees to reimburse TWC for any tax liability including related interest and penalties arising from such invalid documentation.

7. **PROPRIETARY RIGHTS AND CONFIDENTIALITY.** (a) TWC's Proprietary Rights. All materials, including, but not limited to, any Equipment (including related firmware), software, data or information developed or provided by TWC, any identifiers or passwords used to access the Service or otherwise provided by TWC, and any know-how, methodologies or processes including, but not limited to, all copyrights, trademarks, patents, trade secrets, any other proprietary rights inherent therein and appurtenant thereto, used by TWC to provide the Service (collectively "TWC Materials") shall remain the sole and exclusive property of TWC or its suppliers. Customer shall acquire no interest in the TWC Materials by virtue of the payments provided for herein. Customer may use the TWC Materials solely for Customer's use of the Service. Customer may not reproduce, modify or distribute the TWC Materials, or use them for the benefit of any third party. All rights in the TWC Materials not expressly granted to Customer are reserved to TWC. Customer will not open, alter, misuse, tamper with or remove the Equipment as and where installed by TWC, and will not remove any markings or labels from the Equipment indicating TWC (or its suppliers) ownership or serial numbers. (b) Confidentiality. Customer agrees to maintain in confidence, and not to disclose to third parties or use, except for such use as is expressly permitted herein, the TWC Materials and any other information and materials provided by TWC in connection with this Agreement that are identified or marked as confidential or are otherwise reasonably understood to be confidential. (c) Software. If software is provided to Customer hereunder, TWC grants Customer a limited, non-exclusive and non-transferable license to use such software, in object code form only, solely for the purpose of using the Service for Customer's internal business purposes during the Term.

8. **MONITORING AND MODIFICATIONS.** TWC shall have the right, but not the obligation, to monitor traffic and content on its network, in its sole discretion, including through the use of automatic content filters (including without limitation spam, virus, and adult language sniffers and filters). TWC shall have the right, but not the obligation, to upgrade, modify and enhance the Equipment (including related firmware) and the Service and take any action that TWC deems appropriate to protect the Service and its facilities. TWC also shall have the right to add to, modify or delete any provision of the Terms of Use or any Service descriptions. TWC will notify Customer of any material adverse change in the Terms of Use or Service descriptions by posting notice of such change on the TWC web site or by email. Customer's continued use of the Service after such notice shall constitute Customer's acceptance of such change.

9. **TERMINATION.** Either party may terminate this Agreement upon thirty (30) days written notice of the other party's material breach, provided that such material breach is not cured within such thirty (30) day period. TWC may terminate this Agreement in the event that TWC is unable to fulfill any obligation under this Agreement due to Customer's (or a Customer Employee's or Customer's branch office's) failure, or the failure of any owner or landlord controlling access or rights in or to the property in question, to allow TWC access to space, equipment or software at any time during the Term of this Agreement (referred to herein as an "Access Restriction"). In addition, in the event that Customer fails to comply with any applicable laws or regulations, the terms of this Agreement, or the Terms of Use, TWC may suspend or discontinue Customer's Service in whole or in part without advance notice. In the event of a suspension, TWC may require a reconnect charge to restart the suspended Service. Upon the termination or expiration of this Agreement: (a) TWC's obligations hereunder shall cease; (b) Customer promptly shall pay all amounts due and owing to TWC for Service delivered prior to the date of termination or expiration and any applicable deinstallation fee, if any; (c) Customer promptly shall cease all use of any software provided by TWC hereunder, and shall return such software to TWC; and (d) Customer shall return to TWC or permit TWC to remove, in TWC's sole discretion, the Equipment in the same condition as when received, ordinary wear and tear excepted. Customer shall be responsible for reimbursing TWC for the repair or replacement, at TWC's discretion, of any Equipment not returned in accordance with this section. In

addition, notwithstanding anything to the contrary herein, upon early termination of this Agreement by Customer, or by TWC for Customer's breach, or by TWC in the event of an Access Restriction, Customer shall promptly pay TWC, in TWC's discretion, a termination fee equal to the sum of (i) all costs and expenses of construction and installation incurred by or on behalf of TWC in connection with the services ordered by Customer hereunder, to the extent not already reimbursed to TWC by Customer in the form of an Installation Fee. In addition, Customer may, with 60 days notice in writing, terminate services to location listed in Exhibit A, if and when that location is vacated and no longer used by the Customer. For the avoidance of doubt, by signing the Cover Sheet, Customer is committing to procure the Services for the full Term, unless Customer terminates this Agreement early pursuant to the first sentence of this Section 9 as a result of TWC's material uncured breach. Outside of that situation, if Customer, declines to receive or accept the Services, Customer will still be billed for such Services and shall still be obligated to pay for such Services. The parties agree that the remedies set forth herein for early termination are intended to establish liquidated damages in the event of such early termination, since damages in such an event are difficult or impossible to ascertain, and these remedies are not intended as a penalty. The foregoing shall be in addition to any other rights and remedies that TWC may have under this Agreement or at law or equity relating to Customer's material breach.

10. **INDEMNIFICATION.** Customer agrees to defend, indemnify and hold harmless TWC, its affiliates, its service providers and suppliers and their respective officers, directors, employees and agents, from and against all claims, liabilities, damages and expenses, including attorneys' and other professionals' fees, arising out of or relating to (i) the use of the Service, including but not limited to a breach of Section 4 herein; or (ii) personal injury or property damage caused by the negligence or willful misconduct of Customer or its employees or agents.

11. **DISCLAIMER OF WARRANTY.** CUSTOMER ASSUMES TOTAL RESPONSIBILITY FOR USE OF THE SERVICE AND THE INTERNET AND ACCESSES THE SAME AT ITS OWN RISK. TWC EXERCISES NO CONTROL OVER AND HAS NO RESPONSIBILITY WHATSOEVER FOR THE CONTENT TRANSMITTED OR ACCESSIBLE THROUGH THE SERVICE OR THE INTERNET OR ACTIONS TAKEN ON THE INTERNET AND TWC EXPRESSLY DISCLAIMS ANY RESPONSIBILITY FOR SUCH CONTENT OR ACTIONS. EXCEPT AS SPECIFICALLY SET FORTH HEREIN, THE SERVICE AND RELATED EQUIPMENT AND/OR OTHER MATERIALS USED IN CONNECTION WITH THE SERVICE, IF ANY, ARE PROVIDED WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE, NONINFRINGEMENT, SYSTEM INTEGRATION, DATA ACCURACY, QUIET ENJOYMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NO ADVICE OR INFORMATION GIVEN BY TWC, ITS AFFILIATES OR ITS CONTRACTORS OR THEIR RESPECTIVE EMPLOYEES SHALL CREATE ANY WARRANTY. TWC DOES NOT REPRESENT OR WARRANT THAT THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS, WILL PREVENT UNAUTHORIZED ACCESS BY THIRD PARTIES, WILL BE UNINTERRUPTED, SECURE OR ERROR FREE OR THAT ANY MINIMUM TRANSMISSION SPEED IS GUARANTEED AT ANY TIME. IN ADDITION, CUSTOMER ACKNOWLEDGES AND AGREES THAT TRANSMISSIONS OVER THE INTERNET MAY NOT BE SECURE. CUSTOMER FURTHER ACKNOWLEDGES AND AGREES THAT ANY MATERIAL AND/OR DATA UPLOADED, DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE IS DONE AT CUSTOMER'S OWN DISCRETION AND RISK AND THAT CUSTOMER WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO CUSTOMER'S COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE UPLOADING, DOWNLOADING OR OTHER TRANSMISSION OF SUCH MATERIALS AND/OR DATA. IN ADDITION, CUSTOMER ACKNOWLEDGES AND AGREES THAT TWC'S THIRD PARTY SERVICE PROVIDERS DO NOT MAKE ANY WARRANTIES TO CUSTOMER UNDER THIS AGREEMENT, AND TWC DOES NOT MAKE ANY WARRANTIES ON BEHALF OF SUCH SERVICE PROVIDERS UNDER THIS AGREEMENT, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, SYSTEM INTEGRATION, DATA ACCURACY OR QUIET ENJOYMENT.

12. **LIMITATION OF LIABILITY.** IN NO EVENT SHALL TWC BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF WHETHER TWC HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE AGGREGATE LIABILITY OF TWC TO CUSTOMER FOR ANY REASON AND ALL CAUSES OF ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT (INCLUDING, BUT NOT LIMITED TO, CONTRACT, TORT (INCLUDING NEGLIGENCE) AND STRICT PRODUCT LIABILITY) SHALL BE LIMITED TO THE FEES PAID BY CUSTOMER UNDER THIS AGREEMENT IN THE SIX (6) MONTHS PRECEDING THE DATE THE CLAIM ARISES. IN NO EVENT SHALL TWC'S AFFILIATES, THIRD PARTY SERVICE PROVIDERS OR SUPPLIERS HAVE ANY LIABILITY TO CUSTOMER HEREUNDER.

13. **NOTIFICATIONS.** Customer's privacy interests, including Customer's ability to limit disclosure of certain information to third parties, are addressed by, among other laws, the Federal Cable Communications Act (the "Cable Act") and the Electronic Communications Privacy Act. Personally identifiable information that may be collected, used or disclosed in accordance with applicable laws is described in the Subscriber Privacy Notice provided by TWC in writing, which is incorporated herein by reference. Customer acknowledges receipt of the Subscriber Privacy Notice. In addition to the foregoing, Customer hereby acknowledges and agrees that TWC may disclose Customer's and its employees' personally identifiable information as required by law or regulation or by the American Registry for Internet Numbers ("ARIN") or any similar agency. In addition to actions and disclosures specifically authorized by law or statute or authorized elsewhere in this Agreement, TWC shall have the right (except where prohibited by law notwithstanding Customer's consent), but not the obligation, to disclose any information: (i) to protect its rights, property and/or operations, (ii) in response to a subpoena, court order or government

request, or (iii) where circumstances suggest that individual or public safety is in peril. Customer hereby consents to such actions or disclosures.

14. **FORCE MAJEURE.** TWC shall have no liability to Customer hereunder due to circumstances beyond its control, including, but not limited to, acts of God, terrorism, flood, fiber cuts, acts or omissions of other carriers, natural disaster, regulation or governmental acts, fire, civil disturbance, strike, weather, any unauthorized access to or destruction or modification of the Service, in whole or in part, any failure of heat, air conditioning, or power supply, or act or failure to act of Customer or any third party using the Service.

15. **REGULATORY AND LEGAL CHANGES, POLE ATTACHMENT AND CONDUIT CHARGES, TARIFFS.** In the event of any change in applicable law, regulation, decision, rule or order, including without limitation any increase in universal service fees or other government imposed charges, that increases the costs or other terms of delivery of Service to Customer, or, in the event of any increase in pole attachment or conduit charges applicable to any facilities used in providing the Service, Customer acknowledges and agrees that TWC may pass through to Customer any such increased costs, but only to the extent of the actual increase, provided TWC notifies Customer at least thirty (30) days in advance of the increase. In such case, and if such increase materially increases the fees due by Customer hereunder for the applicable Service, Customer may, within thirty (30) days after notification of such increase, terminate the affected Service without incurring termination liability, provided Customer notifies TWC at least fifteen (15) days in advance of the Customer's requested termination date. Further, in the event that TWC is required to file tariffs or rate schedules with a regulatory agency or otherwise publish rates in accordance with regulatory agency rules or policies respecting the delivery of the Service or any portion thereof, and under applicable law, TWC is required to apply those rates to Customer's purchase of Service under this Agreement, then the terms set forth in the applicable tariff or rate schedule shall govern TWC's delivery of, and Customer's consumption or use of, the Service. Customer may terminate upon thirty (30) days written notice to TWC and without liability any Service Order affected by such tariff if such tariff materially increases the fees due by Customer thereunder. In addition, if TWC determines that offering or providing the Service, or any part thereof, has become impracticable for legal or regulatory reasons or circumstances, then TWC may terminate this Agreement as to any or all of the Service, and may terminate any affected Service Orders, without liability by giving Customer thirty (30) days prior written notice (ninety (90) days if during the Initial Term) or any such shorter notice as is required by law or regulation applicable to such determination.

16. **ENTIRE AGREEMENT.** This Agreement, including without limitation the Cover Sheet and all terms that are incorporated herein by this reference, sets forth the entire agreement between the parties with respect to the subject matter hereof and supersedes all previous written or oral agreements or representations between the parties with respect hereto. In the event that TWC permits a Customer to use its own standard purchase order form to order the Service, the parties hereby acknowledge and agree that the terms and conditions hereof shall prevail notwithstanding any variance with the terms and conditions of any purchase order submitted by Customer, and any different or additional terms contained in such purchase order shall have no force or effect.

17. **MISCELLANEOUS.** This Agreement shall be governed and construed in accordance with the laws of the State of North Carolina, excluding its conflicts of law principles. In the event that any portion of this Agreement is held to be invalid or unenforceable, the invalid or unenforceable portion shall be construed in accordance with applicable law as nearly as possible to reflect the original intentions of the parties set forth herein, and the remainder of this Agreement shall remain in full force and effect. No waiver of any breach or default hereunder shall be deemed to be a waiver of any preceding or subsequent breach or default. Customer may not assign this Agreement without the prior written consent of TWC, and any assignment in violation of this Section shall be null and void. TWC may assign its rights and obligations under this Agreement, including without limitation, in whole or in part, to any Time Warner Cable Inc. affiliated party without the prior written approval of or notice to Customer. Customer shall make no press release, public announcement or other public statements regarding this Agreement without TWC's prior written consent. All claims under this Agreement must be initiated not later than two years after the claim arose. There are no third party beneficiaries to this Agreement. Customer understands and agrees that, regardless of any such assignment, the rights and obligations of TWC herein may accrue to, or be fulfilled by, any TWC affiliate, including without limitation Road Runner HoldCo LLC, as well as by TWC and/or its subcontractors. The parties to this Agreement are independent contractors. Any notice under this Agreement shall be given in writing and shall be deemed to have been given when actually received by the other party. Notices shall be delivered to Customer and TWC at the respective addresses set forth above, or to such other address as is provided by one party to the other in writing. The provisions of Sections 6, 7, 9, 10, 11, 12 and 17 shall survive the termination or expiration of this Agreement. No modification of any provision of this Agreement shall be valid unless set forth in a written instrument signed by both parties. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Notwithstanding anything herein to the contrary, any party to this Agreement (and each employee, representative, or other agent of such party) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the transaction and all materials of any kind (including opinions and other tax analyses) that are provided to the party relating to such tax treatment and tax structure.

CITY OF DURHAM

ATTEST:

_____
Clerk

By:_____
_____ City Manager

TIME WARNER ENTERTAINMENT-ADVANCE/NEWHOUSE PARTNERSHIP through its Raleigh Division, d/b/a Time Warner Cable

By:_____
David Lynch, Vice President of Sales

NORTH CAROLINA
COUNTY of _____

ACKNOWLEDGMENT BY CITY OF DURHAM

I, a Notary Public in and for the aforesaid County and State certify that _____ personally appeared before me this day, and acknowledged that he or she is the _____ City Clerk of the City of Durham, a municipal corporation, and that by authority duly given and as the act of the City, the foregoing contract or agreement was signed in its corporate name by its _____ City Manager, sealed with its corporate seal, and attested by its said City Clerk or Deputy City Clerk. This the _____day of _____, 2011

_____
Notary Public

My commission expires:

_____

STATE OF NORTH CAROLINA
COUNTY OF Mecklenburg

ACKNOWLEDGEMENT BY TIME WARNER CABLE RALEIGH DIVISION

I, Karen Reid-Sims Notary Public of County and State aforementioned, do hereby certify that **David Lynch**, known to me to be the **Vice President of Sales** for **TIME WARNER ENTERTAINMENT-ADVANCE/NEWHOUSE PARTNERSHIP through its Raleigh Division, d/b/a Time Warner Cable** , personally appeared before me this day and acknowledged the due execution of the foregoing instrument..

Witness my hand and seal this 30th day of March, 2011.

Notary Public Karen Y. Reid-Sims

My Commission Expires: 4-20-2015

KAREN Y REID-SIMS
Notary Public
Mecklenburg County
North Carolina
My Commission Expires Apr 20, 2015

TWC BUSINESS CLASS PROPRIETARY & CONFIDENTIAL

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