

ORDINANCE NO. _____
CITY OF BURNSVILLE, MINNESOTA

CABLE TELEVISION FRANCHISE ORDINANCE
Date: Sept. 6, 2016

ORDINANCE NO. _____

AN ORDINANCE GRANTING A FRANCHISE TO FRONTIER COMMUNICATIONS OF MINNESOTA, INC. TO CONSTRUCT, OPERATE, AND MAINTAIN A CABLE SYSTEM IN THE CITY OF BURNSVILLE, MINNESOTA FOR THE PURPOSE OF PROVIDING CABLE SERVICE; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM AND THE PUBLIC RIGHTS-OF-WAY IN CONJUNCTION WITH THE CITY'S RIGHT-OF-WAY ORDINANCE, IF ANY, AND PRESCRIBING PENALTIES FOR THE VIOLATION OF THE PROVISIONS HEREIN;

RECITALS

Pursuant to applicable federal and state law, the City is authorized to grant one or more nonexclusive cable television franchises to construct, operate, maintain and reconstruct cable television systems within the City limits.

Frontier Communications of Minnesota, Inc., ("Grantee") applied on May 6, 2016 for a cable television franchise from the City.

The City reviewed the legal, technical and financial qualifications of Grantee and has determined that it is in the best interest of the City and its residents to issue a cable television franchise to the Grantee.

NOW, THEREFORE, THE CITY OF BURNSVILLE DOES ORDAIN that the Grantee is hereby granted a franchise to operate and maintain a Cable System in the City upon the following terms and conditions:

SECTION 1.

SHORT TITLE AND DEFINITIONS

1. Short Title. This Franchise Ordinance shall be known and cited as the Cable Franchise Ordinance.
2. Definitions. For the purposes of this Franchise, the following terms, phrases, words, abbreviations and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future tense; words in the plural number include the singular number; words in the singular number include the plural; and the masculine gender includes the feminine gender. Unless otherwise expressly stated, words not defined herein or in the City Code shall be given the meaning set forth in Applicable Law and, if not defined therein, the words shall be given their common and ordinary meaning. The word "shall" is always mandatory and not merely directory. The word "may" is directory and discretionary and not mandatory.
 - a. **"Actual Cost"** means the incremental cost to the Grantee of materials, capitalized labor and borrowing necessary to provide Cable Service or otherwise comply with a requirement of this Franchise.

- b. **"Affiliate"** means any Person who owns or controls, is owned or controlled by or is under common ownership or control with the Grantee.
- c. **"Applicable Law"** means any law, statute, charter, ordinance, rule, regulation, code, license, certificate, franchise, permit, writ, ruling, award, executive order, directive, requirement, injunction (whether temporary, preliminary or permanent), judgment, decree or other order issued, executed, entered or deemed applicable by any governmental authority of competent jurisdiction. Applicable Law shall include Minnesota Statutes Ch. 238, as may be amended from time to time.
- d. **"Basic Cable Service"** means the lowest service tier which includes the lawful retransmission of local television broadcast signals and any public, educational, and governmental access programming required by the Franchise to be carried on the basic tier.
- e. **"Burnsville System"** means the Cable System operated pursuant to this Franchise and serving a portion of the City.
- f. **"Cable Modem"** means an electronic device, commonly referred to as such, which acts as an interface between the System and a Subscriber's customer premises equipment and allows data communications to be sent and received by the Subscriber.
- g. **"Cable Service"** or **"Service"** means (1) the one-way transmission to Subscribers of video programming or other programming services; and (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming services. For purposes of this Franchise, "Cable Service" includes, but is not limited to, the provision of Internet service over the System, Institutional Network services and any other services or capabilities, but only to the extent consistent with the definition of "Cable Service" pursuant to federal or State law or applicable regulations.
- h. **"Cable System"** or **"System"** means the facility of the Grantee 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 City, and the I-Net as defined in this Franchise. Unless otherwise specified, such term refers to the System constructed and operated in the City under this Franchise. "Cable System" or "System" as defined herein shall not be inconsistent with the definitions set forth in Applicable Law.
- i. **"Channel"** means a portion of the electromagnetic frequency spectrum available on the System as may be specified herein that is capable of delivering a cable television channel as defined in 47 CFR 76.5(r), (s), and (t) or other applicable FCC regulation. This may include, but not be limited to, time or frequency slots, or technical equivalents, discretely identified and capable of carrying full motion, linear, color video and audio, along with other non-video subcarriers and other digital information.
- j. **"City"** means the City of Burnsville, Minnesota, a municipal corporation.

- k. **"City Code"** means the Burnsville City Code, as amended from time to time.
- l. **"City Council"** means the governing body of the City.
- m. **"Class IV Cable Channel"** means a signaling path provided by a Cable System to transmit signals of any type from a Subscriber terminal to another point in the System.
- n. **"Commission"** means any committee, board, consortium, or group to which the City Council expressly delegates authority under this Franchise including any municipal joint powers consortium in which the City participates.
- o. **"Converter"** means an electronic device (sometimes referred to as a receiver) which serves as an interface between the System and a Subscriber's television or other monitor, and which converts signals to a frequency or medium acceptable to the Subscriber's television or other monitor, and by an appropriate Channel selector also permit a Subscriber to view, at a minimum, all signals included in the Basic Cable Service tier (or Universal Service tier).
- p. **"CPI"** means the annual average of the Consumer Price Index for all Urban Consumers (CPI-U) for the Minneapolis-St. Paul CMSA, as published by the Bureau of Labor Statistics.
- q. **"Drop"** means the cable that connects the ground block on the Subscriber's residence or institution to the nearest feeder cable of the System.
- r. **"Educational Access Channel" or "Educational Channel"** means any Channel on the System set aside by the City under the terms of this Franchise for Noncommercial use by educational institutions.
- s. **"FCC"** means the Federal Communications Commission, its designee, and any legally appointed, designated or elected agent or successor.
- t. **"Franchise" or "Cable Franchise"** means this ordinance, as may be amended from time to time, any exhibits attached hereto and made a part hereof, and the regulatory and contractual relationship established hereby.
- u. **"Governmental Access Channel" or "Governmental Channel"** means any Channel on the System set aside by the City under the terms of this Franchise for Noncommercial use by the City or other governmental institutions.
- v. **"Grantee"** means Frontier Communications of Minnesota, Inc., a Minnesota corporation.
- w. **"Franchise Fee"** means the fee established herein in consideration for Grantee's right to operate the Cable System within the City's Rights-of-Way, determined in amount as a percentage of Grantee's Gross Revenues and limited only by the maximum percentage allowed for such assessment by federal law. The term Franchise Fee does not include the exceptions noted in 47 U.S.C. §542(g)(2)(A-E) or any other applicable law.

- x. **"GAAP"** means generally accepted accounting principles as promulgated and defined by the Financial Accounting Standards Board ("FASB"), Emerging Issues Task Force ("EITF") and/or the U.S. Securities and Exchange Commission ("SEC").
- y. **"Gross Revenues"** means any and all revenues derived by the Grantee from or in connection with the operation of the Cable System to provide Cable Services in the Franchise Area. Grantee shall allocate fees and revenues generated from bundled packages and services to cable revenues pro rata based on current published rate card for the packaged services delivered on a stand-alone basis as follows:
 - i. To the extent revenues are received by Grantee for the provision of a discounted bundle of services which includes Cable Services and non-Cable Services, Grantee shall calculate revenues to be included in Gross Revenues using a GAAP methodology that allocates revenue on a pro rata basis when comparing the bundled service price and its components to the sum of the published rate card, except as required by specific federal, state or local law (for example, it is expressly understood that equipment may be subject to inclusion in the bundled price at full rate card value). Nothing in this Section shall have any effect on Grantee's rates for other services that are rate regulated by the Minnesota Public Utilities Commission or Federal Communications Commission. The City reserves its right to review and to challenge Grantee's calculations.
 - ii. Grantee reserves the right to change the allocation methodologies set forth in this Section in order to meet the standards required by governing accounting principles as promulgated and defined by the Financial Accounting Standards Board ("FASB"), Emerging Issues Task Force ("EITF") and/or the U.S. Securities and Exchange Commission ("SEC"). Grantee will explain and document the required changes to the City upon request or as part of any audit or review of franchise fee payments, and any such changes shall be subject to the next subsection below.
 - iii. Resolution of any disputes over the classification of revenue should first be attempted by agreement of the Parties, but should no resolution be reached, the Parties agree that reference shall be made to generally accepted accounting principles ("GAAP") as promulgated and defined by the Financial Accounting Standards Board ("FASB"), Emerging Issues Task Force ("EITF") and/or the U.S. Securities and Exchange Commission ("SEC"). Notwithstanding the forgoing, the City reserves its right to challenge Grantee's calculation of Gross Revenues, including the interpretation of GAAP as promulgated and defined by the FASB, EITF and/or the SEC.
 - iv. Gross Revenues shall include, by way of example but not limitation, revenues from Basic Cable Service, all Cable Service fees, premium, pay-per-view, pay television, late fees, guides, home shopping revenue, Installation and reconnection fees, revenues from program guides and electronic guides, additional outlet fees, Franchise Fees required by this Franchise, revenue from Interactive Services to the extent they are considered Cable Services under Applicable Law; upgrade and downgrade fees, advertising revenue, Converter rental fees and lockout device fees and any and all other revenue derived by the Grantee from the operation of Grantee's Cable System to provide Cable Services in the City. Copyright fees or other license fees paid by Grantee shall not be subtracted from Gross Revenues for purposes of calculating Franchise Fees. Gross Revenues shall include

revenue received by any entity other than Grantee for Cable Services where necessary to prevent evasion or avoidance of the obligation under this Franchise to pay the Franchise Fees. Revenues which are not directly attributable to specific customers, such as advertising revenue and home shopping, shall be allocated to systems and jurisdictions on a per Subscriber basis measured in a consistent manner from period to period. "Gross Revenues" shall also include amounts earned during any period regardless of whether: (1) the amounts are paid in cash, in trade or by means of some other benefit to the Grantee or any Affiliated Entity; (2) the goods or services with which the revenue is associated are provided at cost or the revenue amount can be matched against an equivalent expenditure; and (3) the amounts are initially recorded by the Grantee or an affiliated entity. "Gross Revenues" shall not be net of (1) any operating expense; (2) any accrual, including, without limitation, any accrual for commissions; or (3) any other expenditure, regardless of whether such expense, accrual or expenditure reflects a cash payment. "Gross Revenues", however, shall not be double counted. Revenues of both Grantee and an affiliated entity that represent a transfer of funds between the Grantee and the affiliated entity, and that would otherwise constitute Gross Revenues of both the Grantee and the affiliated entity, shall be counted only once for purposes of determining "Gross Revenues". Similarly, operating expenses of the Grantee which are payable from Grantee's revenue to an affiliated entity and which may otherwise constitute revenue of the affiliated entity, shall not constitute additional "Gross Revenues" for purposes of this Franchise. "Gross Revenues" shall include amounts earned by affiliated entities for the provision of Cable Service in the Franchise Area in connection with the operation of Grantee's Cable System and recorded such types of revenue in its books and records directly but for the existence of affiliated entities. "Gross Revenues" shall not include any taxes, fees or assessments of general applicability imposed or assessed by any Governmental Authority. A Franchise Fee is not such a tax, fee or assessment. The City acknowledges and accepts that Grantee shall maintain its books and records in accordance with GAAP. In no event shall any franchise cable operator in the City be required to pay a different calculation of gross-revenues than another provider.

- z. **"Installation"** means the connection of the System from feeder cable to the point of connection with the Subscriber Converter or other terminal equipment.
- aa. **"Interactive Services"** means those services provided to Subscribers whereby the Subscriber either (a) both receives information consisting of either television or other signal and transmits signals generated by the Subscriber or equipment under his/her control for the purpose of selecting what information shall be transmitted to the Subscriber or for any other purpose or (b) transmits signals to any other location for any purpose.
- bb. **"Leased Access Channel"** means Channels that are designated or dedicated for use by a Person unaffiliated with the Grantee pursuant to 47 U.S. C. § 532.
- cc. **"Lockout Device"** means an optional mechanical or electrical accessory to inhibit the viewing of a certain program or Channel on the Cable System.

- dd. **"Noncommercial"** means, in the context of PEG Channels, programming that does not include the sale or offering for sale of particular products and services but may include the identification and promotion of Persons or businesses, or the acknowledgment of receipt of financial or other support for the production of PEG programming, or use of PEG Channels for lease by commercial and noncommercial users pursuant to Minn. Stat. § 238.084, subd. 1(z).
- ee. **"Normal Operating Conditions"** means those service conditions that are within the control of the Grantee. Conditions that are ordinarily within the control of the Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, maintenance or upgrade of the System, and the development, operation or maintenance of the Grantee's telephone system. Conditions that are not within the control of the Grantee include, but are not limited to, natural disasters, civil disturbances, power outages that extend beyond typical duration, telephone network outages, and severe or unusual weather conditions.
- ff. **"PEG"** means public, educational, and governmental.
- gg. **"Person"** means any individual, partnership, association, joint stock company, joint venture, domestic or foreign corporation, stock or non-stock corporation, limited liability company, professional limited liability corporation, or other organization of any kind, or any lawful successor or transferee thereof, but such term does not include the City.
- hh. **"Public Access Channel(s)"** means any Channel on the System set aside by the City under the terms of this Franchise for Noncommercial use by the public.
- ii. **"Right-of-Way" or "Rights-of-Way"** means the surface, and air space above and area below the surface, of any public street, highway, lane, path, alley, sidewalk, avenue, boulevard, drive, court, concourse, bridge, tunnel, park, parkway, skyway, waterway, dock, bulkhead, wharf, pier, easement or similar property or waters within the City owned by or under control of the City, or dedicated for general public use by the City, including, but not limited to, any riparian right, which, consistent with the purposes for which it was created, obtained or dedicated, may be used for the purpose of installing, operating and maintaining a System provided however, that nothing herein shall be deemed a representation or guarantee by the City that Grantee has an interest or other right that is sufficient to permit installation, operation and maintenance of the System in any particular parcel, tract, lot or section of property.
- jj. **"Right-of-Way Ordinance"** means any ordinance of the City codifying requirements regarding regulation, management and use of Rights-of-Way in the City, including registration, fees, and permitting requirements.
- kk. **"Standard Installation"** means any residential Installation to a Qualified Living Unit.
- ll. **"State"** means the State of Minnesota, its agencies and departments.

- mm. **"Subscriber"** means any Person who lawfully receives Service via the System. In the case of multiple office buildings or multiple dwelling units, the term "Subscriber" means each owner, lessee, tenant or occupant, or each office, dwelling unit, or discrete space in which Service is received, as the context requires.
- nn. **"System Upgrade"** means the improvement or enhancement in the technology or service capabilities made by the Grantee to the System to include increased System capacity.
- oo. **Qualified Living Unit** means a Living Unit capable of receiving Cable Service subject to Grantee performing certain network grooming and conditioning.

SECTION 2.

GRANT OF AUTHORITY AND GENERAL PROVISIONS

1. **Grant of Franchise.** This Franchise is granted pursuant to the terms and conditions contained herein and in Applicable Law. The Grantee shall comply with all provisions of this Franchise and Applicable Laws, regulations and codes. Failure of the Grantee to construct, operate and maintain the System as described in this Franchise, or to meet obligations and comply with all provisions herein, may be deemed a violation of this Franchise.
2. **Grant of Nonexclusive Authority.**
 - a. Subject to the terms of this Franchise, the City hereby grants the Grantee the right to own, construct, operate and maintain a System along the Rights-of-Way in that portion of the City where Grantee is authorized to provide telephone service as the incumbent local exchange carrier (for the purposes of this agreement the "Franchise Area") as described on Exhibit A. The grant of authority set forth in this Franchise applies only to the Grantee's provision of Cable Service; provided, however, that nothing herein shall limit the Grantee's ability to use the System for other purposes not inconsistent with the provision of Cable Service; and provided further, that any local, State and federal authorizations necessary for the Grantee's use of the System for other purposes are obtained by the Grantee. This Franchise does not confer any rights other than as expressly provided herein, or as provided by federal, State or local law. No privilege or power of eminent domain is bestowed by this Franchise or grant. The System constructed and maintained by Grantee or its agents pursuant to this Franchise shall not interfere with other uses of the Rights-of -Way. The Grantee shall make use of existing poles and other aerial and underground facilities available to the Grantee to the extent it is technically and economically feasible to do so.
 - b. Notwithstanding the above grant to use Rights-of-Way, no Right-of-Way shall be used by the Grantee if the City determines that such use is inconsistent with the terms, conditions, or provisions by which such Right -of- Way was created or dedicated, or with the present use of the Right-of-Way.

- c. This Franchise and the right it grants to use and occupy the Rights-of-Way shall not be exclusive and this Franchise does not, explicitly or implicitly, preclude the issuance of other franchises or similar authorizations to operate Cable Systems within the City. Provided, however, that the City shall not authorize or permit another Person to construct, operate or maintain a Cable System on material terms and conditions which are, taken as a whole, more favorable or less burdensome than those applied to the Grantee.
 - d. Should any other multichannel video programming distributor (“MVPD”) over which the City has regulatory jurisdiction provide Cable Service in the current cable service area, the City shall only grant a franchise in accordance with Applicable Law including Minnesota Statutes, Section 238.08, subd. 1.
 - e. This Franchise authorizes only the use of Rights-of-Way for the operation of a System. Therefore, the grant of this Franchise and the payment of franchise fees hereunder shall not exempt the Grantee from the obligation to pay compensation or fees for the use of City property, both real and personal, other than the Rights-of-Way, provided, however, that such compensation or fees are required by City ordinance, regulation or policy and are non- discriminatory.
3. **Lease or Assignment Prohibited.** No Person may lease Grantee’s System for the purpose of providing Cable Service until and unless such person shall have first obtained and shall currently hold a valid Franchise or other lawful authorization containing substantially similar burdens and obligations to this Franchise, including, without limitation, a requirement on such Person to pay franchise fees on such Person’s use of the System to provide Cable Services, to the extent there would be such a requirement under this Franchise if the Grantee itself were to use the System to provide such Cable Service. Any assignment of rights under this Franchise shall be subject to and in accordance with the requirements of Section 10(5).
4. **Franchise Term.** This Franchise shall be in effect for a period of five (5) years, such term commencing on the Effective Date specified in Section 2(9), unless sooner renewed, extended, revoked or terminated as herein provided. The term and effectiveness of this Franchise shall not be affected or modified by subsequent state or federal laws or regulations except to the extent provided herein. In the event Grantee invokes its franchise renewal rights under the Cable Communications Policy Act of 1984, 47 U.S.C. § 521 et. seq., as amended from time to time, the City may extend this Franchise for five (5) additional years by adopting a resolution providing for such extension no less than six (6) months prior expiration of the Franchise upon a finding that the Grantee has substantially complied with the terms herein including the System extension and Service requirements contained in Section 4(5).

5. Compliance with Applicable Laws, Resolutions and Ordinances.

- a. The terms of this Franchise shall define the contractual rights and obligations of the Grantee with respect to the provision of Cable Service and operation of the System in the City. However, the Grantee shall at all times during the term of this Franchise be subject to the lawful exercise of the police powers of the City, the City's the right to adopt and enforce additional generally applicable ordinances and regulations, and lawful and applicable zoning, building, permitting and safety ordinances and regulations. The grant of this Franchise does not relieve the Grantee of its obligations to obtain any generally applicable licenses, permits or other authority as may be required by the City Code, as it may be amended, for the privilege of operating a business within the City or for performing work on City property or within the Rights-of-Way, to the extent not inconsistent with this Franchise. Except as provided below, any modification or amendment to this Franchise, or the rights or obligations contained herein, must be within the lawful exercise of the City's police powers, as enumerated above, in which case the provision(s) modified or amended herein shall be specifically referenced in an ordinance of the City authorizing such amendment or modification. This Franchise may also be modified or amended with the written consent of the Grantee as provided in Section 13(3) herein.
- b. The Grantee shall comply with the terms of any City ordinance or regulation of general applicability which addresses usage of the Rights-of-Way within the City which may have the effect of superseding, modifying or amending the terms of Section 3 and/or Section 8(5)(c) herein, except that the Grantee shall not, through application of such City ordinance or regulation of Rights-of-Way, be subject to additional burdens with respect to usage of Rights-of-Way which exceed burdens on similarly situated Rights-of-Way users.
- c. In the event of any conflict between Section 3 and/or Section 8(5)(c) of this Franchise and any lawfully applicable City ordinance or regulation which addresses usage of the Rights-of-Way, the conflicting terms in Section 3 and/or Section 8(5)(c) of this Franchise shall be superseded by such City ordinance or regulation, except that Grantee shall not, through application of such City ordinance or regulation of Rights-of-Way, be subject to additional burdens with respect to usage of Rights-of-Way which exceed burdens on similarly situated Rights-of-Way users.
- d. In the event any lawfully applicable City ordinance or regulation which addresses usage of the Rights-of-Way adds to, modifies, amends, or otherwise differently addresses issues addressed in Section 3 and/or Section 8(5)(c) of this Franchise, the Grantee shall comply with such ordinance or regulation of general applicability, regardless of which requirement was first adopted except that Grantee shall not, through application of such City ordinance or regulation of Rights-of-Way, be subject to additional burdens with respect to usage of Rights-of-Way which exceed burdens on similarly situated Rights-of-Way users.

SECTION 3.

CONSTRUCTION STANDARDS

1. Registration, Permits and Construction Codes.

- a. The Grantee shall strictly adhere to all State and local laws, regulations and policies adopted by the City Council applicable to the location, construction, installation, operation or maintenance of the System in the City. The City has the right to supervise all construction or installation work performed in the Rights-of-Way as it shall find necessary to ensure compliance with the terms of this Franchise and other applicable provisions of law and regulations.
- b. Failure to obtain permits or to comply with permit requirements shall be grounds for revocation of this Franchise, or any lesser sanctions provided herein or in any other Applicable Law, code or regulation.

2. Restoration of Rights-of-Way and Property. Any Rights-of-Way, or any sewer, gas or water main or pipe, drainage facility, electric, fire alarm, police communication or traffic control facility of the City, or any other public or private property, which is disturbed, damaged or destroyed during the construction, repair, replacement, relocation, operation, maintenance, expansion, extension or reconstruction of the System shall be promptly and fully restored, replaced, reconstructed or repaired by the Grantee, at its expense, to the same or better condition as that prevailing prior to the Grantee's work, to the extent consistent with applicable statutes and rules. It is agreed that in the normal course, with respect to fire and police department facilities and equipment, and water and sewer facilities, and other essential utilities and services, as determined by the City, such restoration, reconstruction, replacement or repairs shall be commenced immediately after the damage, disturbance or destruction is incurred, and the Grantee shall take diligent steps to complete the same, unless an extension of time is obtained from the appropriate City agency or department. In all other cases, reconstruction, replacement, restoration or repairs shall be commenced within no more than three (3) days after the damage, disturbance or destruction is incurred, and shall be completed as soon as reasonably possible thereafter. If the Grantee shall fail to perform the repairs, replacement, reconstruction or restoration required herein, the City shall have the right to put the Rights-of-Way, public, or private property back into good condition. In the event City determines that the Grantee is responsible for such disturbance or damage, the Grantee shall be obligated to fully reimburse the City for required repairs, reconstruction and restoration in accordance with the Right-of-Way Ordinance, as may be amended from time to time.

3. Conditions on Right-of-Way Use.

- a. Nothing in this Franchise shall be construed to prevent the City from constructing, maintaining, repairing or relocating sewers; grading, paving, maintaining, repairing, relocating and/or altering any Right-of-Way; constructing, laying down, repairing,

maintaining or relocating any water mains; or constructing, maintaining, relocating, or repairing any sidewalk or other public work.

- b. All System transmission and distribution structures, lines and equipment erected by the Grantee within the City shall be located so as not to obstruct or interfere with the use of Rights-of-Way except for normal and reasonable obstruction and interference which might occur during construction and to cause minimum interference with the rights of property owners who abut any of said Rights-of-Way and not to interfere with existing public utility installations.
- c. The Grantee shall, at its sole expense, by a reasonable time specified by the City, protect, support, temporarily disconnect, relocate or remove any of its property when required by the City by reason of traffic conditions; public safety; Rights-of-Way construction; street maintenance or repair (including resurfacing or widening); change in Right-of-Way grade; construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, tracks or any other type of government-owned communications or traffic control system, public work or improvement of government-owned utility; Right-of-Way vacation; or for any other purpose where the convenience of the City would be served thereby. If the Grantee fails, neglects, or refuses to comply with the City's request, the City may protect, support, temporarily disconnect relocate or remove the appropriate portions of the System at the Grantee's expense for any of the City's incremental costs incurred as a result of the Grantee's failure to comply. Except in the case of the City's negligence, the City shall not be liable to the Grantee for damages resulting from the City's protection, support, disconnection, relocation or removal, as contemplated in the preceding sentence.
- d. The Grantee shall not place poles, conduits, or other fixtures of the System above or below ground where the same will interfere with any gas, electric, telephone, water or other utility fixtures and all such poles, conduits, or other fixtures placed in any Right-of-Way shall be so placed as to comply with all lawful requirements of the City.
- e. The Grantee shall, upon request of any Person holding applicable permits issued by the City, temporarily move its wires or fixtures to permit the moving of buildings with the expense of such temporary removal to be paid by the Person requesting the same (except in the case where the requesting Person is the City for the purpose of moving a City-owned building, in which case no payment shall be required). The Grantee shall be given not less than ten (10) days' advance written notice to arrange for such temporary wire changes.
- f. To the extent consistent with generally applicable City Code provisions, rules and regulations, and after obtaining the required permits from the City or other appropriate authority, Grantee shall have the right to remove, cut, trim and keep clear of its System trees or other vegetation in and along or overhanging the Rights-of-Way. However, in the exercise of this right, the Grantee agrees not to cut or otherwise injure said trees to any greater extent than is reasonably necessary. This

Franchise does not give the Grantee any authority to remove trees on private property in the City. All trimming shall be performed at the sole cost of the Grantee.

- g. The Grantee shall use its best efforts to give reasonable prior notice to any adjacent private property owners who will be affected or impacted by Grantee's work in the Rights-of-Way.
- h. If any removal, relaying or relocation is required to accommodate the construction, operation or repair of the facilities of a Person that is authorized to use the Rights-of-Way, the Grantee shall, after thirty (30) days advance written notice, and payment of all costs by such Person, commence action to effect the necessary changes requested by the responsible entity. If multiple responsible parties are involved, the City may resolve disputes as to the responsibility for costs associated with the removal, relaying or relocation of facilities among entities authorized to install facilities in the Rights-of-Way if the parties are unable to do so themselves, and if the matter is not governed by a valid contract between the parties or any State or federal law or regulation.
- i. In the event that the System creates or is contributing to an imminent danger to health, safety or property, as reasonably determined by the City, the City, after providing notice to the Grantee, if it is reasonably feasible to do so, may remove or relocate any or all, parts of the System at no expense to the City, other than the City's costs to act on such determination.

4. Use of Existing Poles and Undergrounding of Cable.

- a. Where existing poles, underground conduits, ducts or wire holding structures are available for use by the Grantee, but it does not make arrangements for such use, the City may require, through the established permit, or any other applicable procedure, the Grantee to use such existing poles and wireholding structures if the City determines that the public convenience would be enhanced thereby and the terms available to the Grantee for the use of such poles and structures are just and reasonable.
- b. The Grantee shall place its cables, wires or other like facilities underground, in the manner as may be required by the provisions of the City Code and City policies, procedures, rules and regulations, as amended from time to time, where all utility facilities are placed underground. The Grantee shall not place facilities, equipment or fixtures where they will interfere with any existing gas, electric, telephone, fiber optic or other telecommunications facilities, water, sewer or other utility facilities or with any existing installations of the City, or obstruct or hinder in any manner the various existing utilities serving the residents of the City. To the extent consistent with the City Code, City policies, procedures, rules and regulations, System cable and facilities may be constructed overhead where poles now exist and electric or telephone lines or both are now overhead. However, in no case may the Grantee install poles in areas of the City where underground facilities are generally

used by the utilities already operating. If the City, at a future date, requires all electric and telephone lines to be placed underground in all or part of the City, the Grantee shall, within a reasonable time, as determined by the City, similarly move its cables and lines, at no expense to the City, and shall not seek damages from the City for such compliance.

5. Installation of Facilities.

- a. No poles, towers, conduits, amplifier boxes, pedestal mounted terminal boxes, similar structures, or other wire-holding structures shall be erected or installed by the Grantee without obtaining any required permit or other authorization from the City, and shall be compliant with City code and Applicable Law.
- b. No placement of any pole or wireholding structure of the Grantee is to be considered a vested fee interest in the Rights-of-Way or in City property. Whenever feasible, all transmission and distribution structures, lines, wires, cables, equipment and poles or other fixtures erected by the Grantee within the City are to be so located and installed as to cause minimum interference with the rights and convenience of property owners.

6. Safety Requirements.

- a. All applicable safety practices required by law shall be used during construction, maintenance and repair of the System. The Grantee agrees, at all times, to employ ordinary and reasonable care and to install and maintain in use commonly accepted methods and devices for preventing failures and accidents that are likely to cause damage or injuries to the public or to property. All structures and all lines, equipment and connections in the Rights-of-Way shall at all times be kept and maintained in a safe condition, consistent with applicable safety codes.
- b. The Grantee's construction, operation or maintenance of the System shall be conducted in such a manner as not to interfere with City communications technologies related to the health, safety and welfare of City residents.
- c. The Grantee shall install and maintain such devices as will apprise or warn Persons using the Rights-of-Way of the existence of work being performed on the System in Rights-of-Way.
- d. The Grantee shall be a member of the One Call Notification System (otherwise known as "Gopher State One Call") or its successor, and shall field mark the locations of its underground facilities upon request. Throughout the term of this Franchise, the Grantee shall identify the location of its facilities for the City at no charge to the City.

7. **Removal of Facilities at Expiration of Franchise.** At the expiration of the term for which this Franchise is granted, or upon the expiration of any renewal or extension period which may be granted, the City shall have the right to require the Grantee, at its sole expense: (i) to remove all portions of the System from all Rights-of-Way within the City; and (ii) to restore affected sites to their original condition, provided, however, that if Grantee is providing services other than Cable Services or pursuant to Minnesota Statutes, Section 237.01 et seq., City shall not require the removal of the System. Nothing in this Section shall be deemed either to grant or to preclude the provision of services other than Cable Services. Should the Grantee fail, refuse or neglect to comply with the City's directive, all portions of the System, or any part thereof, may at the option of the City become the sole property of the City, at no expense to the City, or be removed, altered or relocated by the City at the cost of the Grantee. The City shall not be liable to the Grantee for damages resulting from such removal, alteration or relocation.
8. **Right-of-Way Meetings.** Grantee will regularly attend and participate in meetings of the City, of which the Grantee is made aware, regarding Rights-of-Way, joint trenching and boring and other issues that may impact the Cable System.
9. **Joint Trenching.** Grantee shall endeavor to limit the cutting of streets, sidewalks and other Rights-of-Way through joint trenching. Grantee shall contact the appropriate City agency or department prior to any street cuts or disturbance of a sidewalk to determine if utilities or Telecommunications companies or other cable operators are scheduled to cut the same street or disturb the same sidewalk. Upon discovery of other like plans to disturb the Right-of-Way, Grantee shall contact the other users and, where practicable, plan for joint trenching.
10. **Maps.**
 - a. Grantee shall provide maps of all constructed areas and proposed construction in sufficient detail as reasonably requested by the City.
 - b. In the event that Grantee's maps are available electronically, the Grantee shall allow the City "read only" access to its Cable System maps. If needed by the City, Grantee will purchase and provide the software necessary to enable the City to read Grantee's electronic maps.
11. **Main Roads and Streets.** Grantee shall not unduly create traffic congestion on main roads and streets due to construction or maintenance of the Cable System. Construction and maintenance shall be scheduled around morning and evening rush hours when practicable. In the event that construction or maintenance must be conducted during such times and at such places, the Grantee shall notify the appropriate City agency or department. The City may deny Grantee's use of said streets and roadways during said periods.

12. **Discontinuing Use/Abandonment of Cable System Facilities.** Whenever Grantee intends to discontinue using any facility within the Rights-of-Way, Grantee shall notify the City of its intent regarding such discontinuance. Grantee may remove the facility or request that the City permit it to remain in place. Notwithstanding Grantee's request that any such facility remain in place, the City may require Grantee to remove the facility from the Right-of-Way or modify the facility to protect the public health, welfare, safety, and convenience, or otherwise serve the public interest. The City may require Grantee to perform a combination of modification and removal of the facility. Grantee shall use its best efforts to complete such removal or modification in accordance with a schedule set by the City. Until such time as Grantee removes or modifies the facility as directed by the City, or until the rights to and responsibility for the facility are accepted by another Person having authority to construct and maintain such facility, Grantee shall be responsible for all necessary repairs and relocations of the facility, as well as maintenance of the Right-of-Way, in the same manner and degree as if the facility were in active use, and Grantee shall retain all liability for such facility.

13. **Stop Work.**

- a. On notice from the City that any work is being performed contrary to the provisions of this Franchise, or in an unsafe or dangerous manner as determined by the City, or in violation of the terms of any applicable permit, laws, regulations, ordinances, or standards, the work may immediately be stopped by the City.
- b. The stop work order shall:
 - i. Be in writing;
 - ii. Be given to the Person doing the work, or posted on the work site;
 - iii. Be sent to Grantee;
 - iv. Indicate the nature of the alleged violation or unsafe condition; and
 - v. Establish conditions under which work may be resumed.

14. **Contractors and Subcontractors.** Any contractor or subcontractor used for work or construction, installation, operation, maintenance or repair of Grantee's Cable System must be properly licensed under the laws of the State of Minnesota and in accordance with all applicable local ordinances. Each contractor or subcontractor shall have the same obligations with respect to its work as Grantee would have if the work were performed by Grantee. Grantee shall employ contractors, subcontractors and employees to perform work for it who are trained and experienced in their duties. Grantee shall be responsible for ensuring that the work performed is consistent with the obligations of this Franchise and applicable laws, regulations, policies and procedures, and shall be responsible for promptly correcting acts, as necessary, or omissions by any contractor or subcontractor. A contractor or subcontractor shall be required to carry the same insurance coverage as may be required of the Grantee.

SECTION 4.

DESIGN PROVISIONS

1. System Facilities and Equipment.

- a. The System shall be constructed and maintained to have at least the following characteristics:
 - i. System architecture that permits System Upgrade and other improvements necessary for a modern, high-quality System and reliable service throughout the Franchise term, and the capability to operate continuously on a twenty-four hour a day basis without severe material degradation during operating conditions typical to the Minneapolis/St. Paul metropolitan area;
 - ii. System shall, at minimum, be technically capable of transmitting standard definition (SD) digital, high definition (HD), any successor format, and other compressed digital transmissions consistent with or better than industry norms for the duration of the franchise.
 - iii. Standby power generating capacity at the headend. The Grantee shall maintain motorized standby power generators capable of powering all headend equipment for at least twenty-four (24) hours initially and indefinitely with a continuous or replenished fuel supply. The back-up power supplies serving the System shall be capable of providing power to the System for not less than four (4) hours per occurrence measured on an annual basis according to manufacturer specifications in the event of an electrical outage. The Grantee shall maintain sufficient portable motorized generators to be deployed in the event that the duration of a power disruption is expected to exceed four (4) hours; facilities of good and durable quality, generally used in high-quality, reliable systems of similar design;
 - v. System shall conform to or exceed all applicable FCC technical performance standards, as amended from time to time, which standards are incorporated herein by reference, and any other applicable technical performance standards including any FCC regulations regarding carriage of digital, HDTV and any successor format transmissions. End of the line performance must meet or exceed FCC specifications at the end of the Subscriber Drop;
 - vi. System shall, at all times, comply with applicable federal, State and local rules, regulations, practices and guidelines pertaining to the construction, upgrade, operation, extension and maintenance of Cable Systems, including, by way of example (but not limitation):

- (A) National Electrical Code, as amended from time to time;
 - (B) National Electrical Safety Code (NESC), as amended from time to time; and
 - (C) the City Code, as amended from time to time.
- vii. Facilities and equipment sufficient to cure violations of FCC technical standards and to ensure that Grantee's System remains in compliance with the standards specified in subparagraph (v);
 - viii. Such facilities and equipment as necessary to maintain, operate and evaluate the Grantee's System for compliance with FCC technical and customer service standards, as may be amended, and the standards of this Franchise;
 - ix. If required, Status monitoring equipment to monitor the system's performance throughout the headend and distribution network to the set-top, including signal level, noise and distortion and to alert the Grantee when and where back-up power is being used;
 - x. All facilities and equipment required to properly test the System and conduct an ongoing and active program of preventative maintenance and quality control, and to be able to quickly respond to customer complaints and resolve System problems;
 - xi. Antenna supporting structures designed in accordance with any applicable governmental building codes, as amended, and painted, lighted and erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration, the Federal Communications Commission and all other applicable codes and regulations;
 - xii. Facilities and equipment at the headend allowing the Grantee to transmit or cablecast signals in substantially the form received, without substantial alteration or deterioration. For example, at a minimum the headend should include equipment that will transmit color video signals received at the headend in color, stereo audio signals received at the headend in BTSC stereo format, and a signal received with secondary or multiple audio tracks with all audio tracks;
 - xiii. Grantee shall provide adequate security provisions in its Subscriber site equipment to permit parental control over the use of Grantee's Cable Service. The Grantee, however, shall bear no responsibility for the exercise of parental controls and shall incur no liability for any Subscriber's or viewer's exercise or failure to exercise such controls;
 - xiv. Facilities and equipment capable of operating within the temperature ranges typical to the climate of the Burnsville area over the calendar year;

- xv. System shall be so constructed and operated that there is no perceptible deterioration in the quality of Public, Educational or Governmental Access Channel signals after delivery of such signals to the first interface point with an I-Net hub, Grantee's headend or the Subscriber network, whichever is applicable, as compared with the quality of any other channel on the System. As used in this paragraph, "deterioration" refers to delivery of impaired signals that is within the control of the Grantee; and
 - xvi. Grantee must have capability to allow hearing impaired customers to contact the company.
 - xvii. All facilities and equipment designed, built, and operated in such a manner as to comply with all applicable FCC requirements regarding (i) consumer electronic equipment and (ii) interference with the reception of off-the-air signals by Subscriber;
 - xviii. All facilities and equipment designed, built and operated in such a manner as to protect the safety of Grantee's Cable System workers and the public;
 - xix. Sufficient trucks, tools, testing equipment, monitoring devices, and other equipment and facilities and trained and skilled personnel required to enable Grantee to substantially comply with applicable law, including applicable customer service requirements and including requirements for responding to Cable System outages;
 - xx. Grantee shall comply with all FCC regulations regarding closed captioning and other regulations applicable to providing services to disabled Subscribers.
- b. Unless rendered obsolete by a System Upgrade, as determined in the City's sole discretion, the System shall provide at least the following characteristics:
- i. segmentation of the System so that sufficient capacity is available for interactive services at all times;
 - ii. a capacity rating a systems that has the functional equivalent of a traditional 870 MHz cable system;
 - iii. modular audio control units shall be utilized for any Channel for volume control, excluding off-air broadcast Channels or, Channels that are sent through a processor instead of being modulated and de-modulated; and
- c. The System shall provide at least two hundred (200) or more activated minimum downstream video Channels accessible from any Subscriber in the Franchise Area.

- d. All power supplies for the System shall be equipped with standby power capability in accordance with Section 4(1)(a)(iii). Additionally, the Grantee shall use status monitoring equipment at all power supply locations in the System. Such equipment shall have the capabilities described in Section 4(1)(a)(viii).
- e. PEG Channels shall at all times be provided to Subscribers using System technology equivalent to the highest quality commercial Channels
- f. Emergency Alert System.
 - i. The Grantee shall install and thereafter maintain Emergency Alert System (“EAS”) capabilities fully compliant with local, state and federal EAS requirements including 47 C.F.R., Part 11, and any Minnesota State Emergency Alert System requirements. The EAS shall at all times be operated in compliance with FCC regulations.
 - ii. The City may identify authorized emergency officials for activating the EAS consistent with the Minnesota State Emergency Statewide Plan (“EAS Plan”). The City may also develop a local plan containing methods of EAS message distribution, subject to Applicable Laws and the EAS Plan.
 - iii. In the event that the City requires the Grantee to provide for local activation of the EAS, the City may, from time to time, conduct reasonable tests of the EAS. The City shall provide reasonable notice to the Grantee prior to any test use of the EAS. The Grantee shall cooperate with the City in any such test.
- g. The City may initiate a review of the System no more than every three (3) years, and not during the initial Franchise Term, to evaluate whether the Grantee is incorporating periodic technical improvements in the System and whether the System remains “state of the art.” To the extent such audit demonstrates that the System is not performing in compliance with this Franchise, the cost of any System technical audit shall be reimbursed by the Grantee. Any System Upgrade shall incorporate technological improvements and enhancements to ensure that the System remains “state of the art.” “State of the art” shall mean, for these purposes, the highest level of development of service capabilities deployed in any system operated by the Grantee.
- h. The Grantee shall not assert or otherwise raise any claim before a court of competent jurisdiction or any administrative agency alleging that, as of the Effective Date of this Franchise, the minimum System design and performance requirements set forth in this Franchise are unenforceable under or inconsistent with Applicable Law or any orders or decisions of the FCC.

2. **Interconnection.** The parties acknowledge that it may be feasible for the Grantee to meet its PEG Access Channel and programming delivery obligations under Section 6 of this Franchise by interconnecting with City-owned PEG facilities. To the extent necessary, however, Grantee and City shall cooperate to establish a means for the System to interconnect with neighboring cable systems or PEG facilities to obtain PEG programming that is carried on the City's PEG Access Channels but not originated within the City including programming originated by the City of Eagan, Apple Valley school district (ISD 196) and Lakeville school district (ISD 194).

3. **System Construction.**

- a. Any future System construction shall be performed in accordance with Applicable Laws and regulations except where specifically waived by the City.
- b. In addition to requesting any required City permits, the Grantee shall provide the City with notice prior to significant System maintenance activities in which possible service disruptions or physical construction activities may occur that require Grantee to obtain a permit from the City, including but not limited to: (i) tap pedestal replacements; (ii) amplifier/line extender pedestal replacements; (iii) underground duct replacement; (iv) initial installation, replacement or overlash of aerial fiber optic lines; (v) DSLAM replacements; and (vi) underground placement or replacement of facilities.
- c. The Grantee shall make available to the City for review, on a confidential basis, a concise description of the facilities proposed to be erected or installed.

4. **Progress Reporting.** Following commencement of construction of the Cable System or any similar major construction, the Grantee shall, upon request of the City, provide a written update on the progress of such construction.

5. **Line Extension and Service Requirements.** The Grantee shall design, construct and maintain the Cable System in the Service Area in accordance with Minn. Stat. Section 238.084. Within the Franchise Area as it exists from time to time, the Grantee must provide Service to any Qualified Living Unit. As the Cable System is constructed and made capable of providing Cable Service, Grantee shall activate and offer Cable Service to Qualified Living Units within a reasonable period of time. No Person shall be refused Service arbitrarily.

The Grantee shall annually meet with City representatives to report on the progress of Cable System construction and Service activation and, at such annual meetings, shall provide current service area maps. Grantee's annually updated maps may be marked as "Trade Secret" in which case the City shall maintain them accordingly under the Minnesota Data Practices Act, Minn. Stat. Ch. 13.

6. System Maintenance.

- a. Maintenance of the System shall be performed in accordance with the technical performance and operating standards established by FCC rules and regulations. Should the FCC choose to abandon this field and does not preempt the City's entry into this field, the City may adopt such technical performance and operating standards as its own, and the Grantee shall comply with them at all times.

7. System Performance Tests and Inspections; Special Testing.

- a. The Grantee shall, at no cost to the City, perform all tests at the intervals so long as such tests are required by the FCC, and all other tests required by law or regulation and as may be necessary to demonstrate compliance with the requirements of this Franchise. These tests shall include, at a minimum:
 - i. Initial proof of performance and cumulative leakage index testing for any construction;
 - ii. Semi-annual compliance tests; in conformance with generally accepted industry guidelines and to prove system wide compliance with FCC 47 C.F.R. 76.640(b)(1)(i) (Digital Signals) and new FCC requirements and standards that may become effective during the Franchise Term;
 - iii. Cumulative leakage index tests, at least annually, designed to ensure that one hundred percent (100%) of Grantee's Cable system has been ground or air tested for signal leakage in accordance with FCC Standards.
 - iv. Tests in response to Subscriber complaints;
 - v. Tests requested by the City to demonstrate Franchise compliance; and

Written records of all system test results performed by or for Grantee shall be maintained, and shall be available for City inspection upon request.

- b. The City shall have the right to inspect all construction or installation work performed pursuant to the provisions of the Franchise.
- c. The City may also require special testing of a location or locations within the System if there is a particular matter of controversy or unresolved complaints regarding System construction, operations or installation work pertaining to such location(s). Such tests shall be limited to the particular matter in controversy. The City shall endeavor to so arrange its request for such special testing so as to minimize hardship or inconvenience to the Grantee or to the Subscribers of such testing. Before ordering such tests, the Grantee shall be afforded fourteen (14) days following receipt of written notice to investigate and, if necessary, correct problems or complaints upon which tests were ordered. If fourteen (14) days elapse without correction of the matter

in controversy or resolution of complaints, the tests shall be conducted at the Grantee's expense by a qualified engineer selected by the City, and Grantee shall cooperate in such testing.

- d. Unless otherwise provided in this Franchise, tests shall be supervised by the Grantee's chief technical authority, who shall certify all records of tests provided to the City.
 - e. The Grantee shall provide the City with at least two (2) business days' prior written notice of, and opportunity to observe, any tests performed on the System.
 - f. Test results shall be filed with the City within ten (10) days of a written request by the City.
 - g. If any test indicates that any part or component of the System fails to meet applicable requirements, the Grantee, without requirement of additional notice or request from the City, shall take corrective action, retest the locations and advise the City of the action taken and the results achieved by filing a written report certified by the Grantee's chief technical authority.
8. **Drop Testing and Replacement.** The Grantee shall replace all failing Drops and/or associated passive equipment at no separate charge to the individual Subscriber.
9. **FCC Reports.** Unless otherwise required by the terms of this Franchise, the results of any tests required to be filed by Grantee with the FCC or in the Grantee's public file shall upon request of the City also be filed with the City within ten (10) days of the request.
10. **Non-voice Return Capability.** Grantee is required to use cable and associated electronics having the technical capacity for non-voice return communications.
11. **Lockout Device.** Upon the request of a Subscriber, the Grantee shall make a Lockout Device available at no additional charge, other than a charge for a Converter.
12. **Types of Service.** Grantee shall provide Cable Service programming in at least the following broad categories:
Local Broadcast (subject to federal carriage requirements)
Public Broadcast
News and Information
Sports
General Entertainment
Arts/Performance/Humanities
Science/Technology
Children/Family/Seniors
Foreign Language/Ethnic Programming
PEG Access Programming (to the extent required by the Franchise)
Movies

Should the Grantee change the selection of programs or services offered on any of its tiers, Grantee shall maintain the mix, quality and level of services provided over the System. Any change in programs or services offered shall comply with all lawful conditions and procedures contained in this Franchise and Applicable Law.

- 13 **Uses of System.** Upon the City's request, the Grantee shall advise the City in writing of all active uses of the System, for both entertainment and other purposes, and the City shall have the right to conduct unannounced audits of such usage.

SECTION 5.

SERVICE PROVISIONS

1. **Customer Service Standards.** The Grantee shall at all times comply with FCC customer service standards. In addition, the Grantee shall at all times satisfy all additional or stricter customer service requirements as set forth in this franchise, or as may be set forth in any ordinance or regulation lawfully enacted by the City.
- a. **Response to Customers and Cooperation with City.** Grantee shall promptly respond to all requests for service, repair, installation and information from Subscribers. Grantee acknowledges the City's interest in the prompt resolution of all cable complaints and shall work in close cooperation with the City to resolve complaints.
 - b. **Definition of "Complaint."** A "complaint" shall mean any communication by a Subscriber to the City expressing dissatisfaction with any service, performance, or lack thereof, by Grantee under the obligations of this Franchise.
 - c. **Customer Service Agreement and Written Information.** Upon Subscriber request for initial service, for service changes/upgrades/downgrades and/or for scheduling a service call, Grantee shall provide to Subscribers a clear, concise and comprehensive service agreement and information in writing for use in establishing Subscriber service. Written information shall, at a minimum, contain the following information:
 - i. Total upfront cost and ongoing monthly bill amounts.
 - ii. The date of expiration of any customer promotions or discounts, and the resulting increase to the Subscriber's bill that will be incurred at the time of expiration.
 - iii. Services to be provided and rates for such services.
 - iv. Billing procedures.
 - v. Service termination procedure.

- vi. Change in service notifications.
 - vii. Liability specifications.
 - viii. Converter/Subscriber terminal equipment policy.
 - ix. How complaints are handled including Grantee's procedure for investigation and resolution of Subscriber complaints.
 - x. The name, address, and phone number of the Person identified by the City as responsible for handling cable questions and complaints for the City. This information shall be prominently displayed and Grantee shall submit the information to the City for review and approval as to its content and placement on Subscriber billing statements. A copy of the written information shall be provided to each Subscriber at the time of initial Connection and any subsequent reconnection.
- d. **Reporting.** Grantee shall submit reports on all customer service standards identified herein during each successive calendar quarter, except as otherwise provided herein.

Timing. A Grantee shall submit reports within thirty (30) days after the close of the applicable reporting period. Each report shall include data from the applicable reporting period.

Each of the reporting requirements are self-executing and the Grantee agrees that the City does not need to provide additional notice or an opportunity to cure in order to establish that the Grantee has committed a breach of these requirements for the purposes of the Grantee's obligation to pay liquidated damages as may be described in a Franchise.

Compliance. If a monthly or quarterly report indicated that a Grantee has failed to meet any of the minimum required standards, the Grantee shall, upon City's written request, provide a written explanation of the deviation within ten (10) business days of the report, including steps being taken to cure the deviation, and the time expected to implement the cure.

Information in the reports about Call Response times shall be determined on the basis of the simple average of results under Normal Operating Conditions for the entire reporting period, and any report submitted at the end of a calendar quarter shall report the total number of calls during the preceding quarter and the average Call Response times during that quarter.

The requirements of this Section shall be subject to federal law regarding Subscriber privacy. Consistent with the way such information is maintained in the ordinary course of business, Grantee shall maintain customer service performance data available for City inspection. Customer service performance data shall include the date, name, address and telephone number of Subscriber complaints as well as the

subject of the complaint, date and type of action taken to resolve the complaint, any additional action taken by Grantee or the Subscriber. The data shall be maintained in a way that allows for simplified access of the data by the City.

Subject to federal law and upon reasonable request by the City, Grantee shall, within a reasonable amount of time, make available City with such customer service data for its review.

Each Grantee will maintain a file open for public inspection containing all notices provided to Subscribers under these standards, as well as all promotional offers made to Subscribers. The notices and offers will be kept in the file for at least one (1) year from the date of such notice or promotional offer.

- e. **Local Office.** Grantee shall maintain a convenient local customer service and bill payment location for matters such as receiving Subscriber payments, handling billing questions, equipment replacement and customer service information. Grantee shall comply with the standards and requirements for customer service set forth below during the term of this Franchise.
- f. **Cable System office hours and telephone availability.**
 - i. Grantee will maintain a local, toll-free or collect call telephone access line which will be available to its Subscribers twenty-four (24) hours a Day, seven (7) days a week.
 - ii. Trained Grantee representatives will be available to respond to customer telephone inquiries during Normal Business Hours.
 - iii. After Normal Business Hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after Normal Business Hours must be responded to by a trained Grantee representative on the next business Day.
 - iv. Under Normal Operating Conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when 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 under Normal Operating Conditions, measured on a quarterly basis.
 - v. Grantee shall not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.
 - vi. Under Normal Operating Conditions, the customer will receive a busy signal less than three (3) percent of the time.

- vii. Under Normal Operating Conditions, the percentage of calls abandoned or dropped shall not exceed three (3) percent.
 - viii. Customer service center and bill payment locations will be open at least during Normal Business Hours and will be conveniently located.
 - ix. In addition to any Customer service center, each Grantee shall maintain and operate, throughout the term of any Franchise, at least two conveniently accessible locations within the City where Subscribers may pay bills.
- g. **Installations, Outages and Service Calls.** Under Normal Operating Conditions, each of the following standards will be met no less than ninety-five percent (95%) of the time measured on a quarterly basis:
- i. Standard Installations to Qualified Living Units will be performed within seven (7) business days after an order has been placed.
 - ii. Excluding conditions beyond the control of Grantee, Grantee will begin working on "Service Interruptions" promptly and in no event later than twenty-four (24) hours after the interruption becomes known, where the Grantee has adequate access to facilities to which it must have access in order to remedy the problem.
 - iii. Grantee must begin actions to correct other Service problems the next business Day after notification of the Service problem, and must complete correction within five (5) business days from the date of the initial request.
 - iv. The "appointment window" alternatives for Installations, Service calls, and other Installation activities will be either a specific time or, at maximum, a four (4) hour time block during Normal Business Hours. (Grantee may schedule Service calls and other Installation activities outside of Normal Business Hours for the express convenience of the customer.)
 - v. Grantee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.
 - vi. If Grantee's representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.
 - vii. If the Grantee makes reasonable and no less than three (3) attempts to confirm an appointment during the scheduled appointment time or appointment window and is unsuccessful in obtaining such confirmation, the Grantee may assume that the Customer has cancelled the appointment.

- viii. The failure of the Grantee to hire sufficient staff or to properly train its staff will not justify a Grantee's failure to comply with this provision.

h. Communications between Grantee and Subscribers.

- i. Refunds. Refund checks will be issued promptly, but no later than either:
- The customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or
 - The return of the equipment supplied by Grantee if Cable Service is terminated.
- ii. Credits. Credits for Cable Service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

i. Billing

- i. Consistent with 47 C.F.R. § 76.1619, bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, Basic Cable Service and premium Cable Service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.
- ii. In case of a billing dispute, Grantee must provide initial acknowledgement within 24 hours of receipt of a written complaint from a Subscriber, and a final written response within thirty (30) days.
- iii. A Grantee's billing statement must show a specific payment due date not earlier than the later of:
- Fifteen (15) days after the date the statement is mailed; or
 - The tenth (10th) day of the service period for which the bill is rendered.
- iv. A Grantee's bill must permit a Subscriber to remit payment by mail, electronically, or in Person at the Grantee's local office or at a listed drop-off location.
- v. A Grantee's first billing statement after a new installation or service change will be prorated as appropriate and will reflect any security deposit.

- j. **Subscriber Information.** Grantee will provide clear and accurate written information on each of the following areas at the time of Installation of Service, at least annually to all Subscribers in correspondence separate from the monthly bill, and at any time upon request:
- i. Products and Services offered;
 - ii. Prices and options for programming services, products, equipment and conditions of subscription to programming and other services, which must include any senior, disabled or other discounts offered and the least expensive tier of service available, including any free PEG related tiers if applicable;
 - iii. Installation and Service maintenance policies;
 - iv. Instructions on how to use the Cable Service;
 - v. Channel positions of programming carried on the System; and
 - vi. Billing and complaint procedures, including the address and telephone number of the City's cable office, and when a Subscriber is entitled to refunds for outages and how to obtain them.
 - vii. Delinquent Subscriber disconnect and reconnect procedures; information regarding the availability of parental control devices, the conditions under which they will be provided, and the cost (if any) to be charged
 - viii. Information describing conditions that must be met to qualify for discounts; and any discounts, services or specialized equipment available to Subscribers who are seniors or with disabilities; explaining how to obtain them; and explaining how to use any accessibility features
 - ix. Days, hours of operation and locations of Customer Service Centers.
 - x. Subscribers shall be advised of the procedures for resolution of complaints about the quality of the television signal delivered by Grantee, including the address of the responsible officer of the City. Subscribers will be notified of any changes in rates, programming services or Channel positions as soon as possible in writing. Notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of Grantee. In addition, Grantee shall notify Subscribers thirty (30) days in advance of any significant changes in the information required by this Section. City shall receive this information at least 60 days in advance.

- k. **Notice of Rate or Programming Change.** In addition to the requirement of this Section regarding advance notification to Subscribers of any changes in rates, programming services or Channel positions, Grantee shall give thirty (30) days written notice to Subscribers and shall endeavor to give additional advance notice to the City before implementing any rate or Service change. Such notice shall state the precise amount of any rate change and briefly explain in readily understandable fashion the cause of the rate change (e.g., inflation, change in external costs or the addition/deletion of Channels). When the change involves the addition or deletion of Channels, each Channel added or deleted must be separately identified. For purposes of the carriage of digital broadcast signals, Grantee need only identify for Subscribers, the television signal added and not whether that signal may be multiplexed during certain dayparts.
- l. **Subscriber Contracts.** Grantee shall, upon written request, provide the City with any standard form residential Subscriber contract utilized by Grantee. If no such written contract exists, Grantee shall file with the City a document completely and concisely stating the length and terms of the Subscriber contract offered to customers. The length and terms of any standard form Subscriber contract(s) shall be available for public inspection during Normal Business Hours. A list of Grantee's current Subscriber rates and charges for Cable Service shall be maintained on file with City and shall be available for public inspection.

The Grantee may not require a residential Subscriber to enter into an exclusive contract as a condition of providing or continuing Cable Service. The Grantee shall not engage in acts prohibited by federal or State law that have the purpose or effect of limiting competition for the provision of Cable Service in the City.

- m. **Refund Policy.** If a Subscriber's Cable Service is interrupted or discontinued, without cause, for a period of four (4) hours or more during a twenty-four (24) hour period, Grantee shall, upon request by the Subscriber, credit such Subscriber pro rata for such interruption. For this purpose, every month will be assumed to have thirty (30) Days.
- n. **Late Fees.** Grantee shall comply with all applicable state and federal laws with respect to any assessment, charge, cost, fee or sum, however characterized, that Grantee imposes upon a Subscriber for late payment of a bill. The City reserves the right to enforce Grantee's compliance with all Applicable Laws to the maximum extent legally permissible.

A late fee or administrative fee (collectively referred to below as a "late fee") may not be imposed for payments earlier than forty-five (45) days after the due date specified in the bill.

A late fee may not be imposed unless the Subscriber is provided written notice at least ten (10) days prior to the date the fee is imposed that a fee will be imposed, the date the fee will be imposed and the amount of the fee that will be imposed if the

delinquency is not paid. A late fee may not be imposed unless the outstanding balance exceeds \$10.00.

Subscribers will not be charged a late fee or otherwise penalized for any failure by a Grantee, including failure to timely or correctly bill the Subscriber, or failure to properly credit the Subscriber for a payment timely made. Payments will be considered timely if postmarked on the due date.

- o. **Disputes.** All Subscribers and members of the general public may direct complaints, regarding Grantee's Service or performance to the chief administrative officer of the City or the chief administrative officer's designee, which may be a board or Commission of the City. The Grantee must attempt to contact the Subscriber who is the subject of the dispute within two business days of receiving the complaint notice from the City. The Grantee shall establish a company contact person for the City (telephone number and e-mail address) to whom the City may forward escalated complaints and who will work with the complaining Subscribers or City to resolve such complaints.
- p. **Customer bills** shall be designed in such a way as to present the information contained therein clearly and comprehensibly to Customers, and in a way that (A) is not misleading and (B) does not omit material information. Notwithstanding anything to the contrary above, Grantee may, in its sole discretion, consolidate costs on Customer bills as may otherwise be permitted by Section 622(c) of the Cable Act (47 U.S.C. §542(c)).
- q. **Failure to Resolve Complaints.** Grantee shall resolve a complaint within thirty (30) days in a manner deemed reasonable by the City under the terms of the Franchise.
- r. **Maintain a Repair Phone Line.** Grantee shall maintain a local or toll-free telephone Subscriber repair line, available to its Subscribers twenty-four (24) hours per Day, seven (7) days a week.
- s. **Notification of Complaint Procedure.** Grantee shall have printed clearly and prominently on each Subscriber bill and in the customer service agreement provided for in this Section, the twenty-four (24) hour Grantee phone number for Subscriber complaints. Additionally, Grantee shall provide information to customers concerning the procedures to follow when they are unsatisfied with measures taken by Grantee to remedy their complaint. This information will include the phone number of the City office or Person designated to handle complaints. Additionally, Grantee shall state that complaints should be made to Grantee prior to contacting the City.
- t. **Senior/Disabled Discount/Service.** The Grantee shall, upon obtaining 50% or more of eligible cable subscribers in the Franchise Area served by franchised providers, provide at least a ten percent (10%) per month discount on Service to senior citizens, persons with disabilities, or who are below the poverty level. The

Grantee may require persons seeking such discount to provide reasonable evidence or documentation of eligibility for the requested discount.

With regard to Subscribers with disabilities, upon Subscriber request, Grantee will arrange for pickup and/or replacement of converters or other Grantee equipment at the Subscriber's address or by a satisfactory equivalent (such as the provision of a postage-prepaid mailer) at no charge to the Subscriber.

- u. **Subscriber Privacy.** To the extent required by Minn. Stat. §238.084 Subd. 1(s) Grantee shall comply with the following: No signals including signals of a Class IV Channel may be transmitted from a Subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the Subscriber. The request for permission must be contained in a separate document with a prominent statement that the Subscriber is authorizing the permission in full knowledge of its provisions. Such written permission shall be for a limited period of time not to exceed one (1) year which may be renewed at the option of the Subscriber. No penalty shall be invoked for a Subscriber's failure to provide or renew such permission. The permission shall be revocable at any time by the Subscriber without penalty of any kind whatsoever.

No information or data obtained by monitoring transmission of a signal from a Subscriber terminal, including but not limited to lists of the names and addresses of Subscribers or any lists that identify the viewing habits of Subscribers shall be sold or otherwise made available to any party other than to Grantee or its agents for Grantee's business use, and also to the Subscriber subject of that information, unless Grantee has received specific written permission from the Subscriber to make such data available. The request for permission must be contained in a separate document with a prominent statement that the Subscriber is authorizing the permission in full knowledge of its provisions. Such written permission shall be for a limited period of time not to exceed one (1) year which may be renewed at the option of the Subscriber. No penalty shall be invoked for a Subscriber's failure to provide or renew such permission. The permission shall be revocable at any time by the Subscriber without penalty of any kind whatsoever.

Written permission from the Subscriber shall not be required for the conducting of system wide or individually addressed electronic sweeps for the purpose of verifying System integrity or monitoring for the purpose of billing. Confidentiality of such information shall be subject to the provision set forth in this Section.

- v. **Grantee Identification.** Grantee shall provide all customer service technicians and all other Grantee employees entering private property with appropriate picture identification so that Grantee employees may be easily identified by the property owners and Subscribers.
- w. **Planned Interruptions of Service.** A Grantee shall inform Subscribers and the City three (3) days prior to any scheduled or planned interruption of service for planned

maintenance or construction; provided, however, that planned maintenance that does not require more than one (1) hour interruption of service and/or that occurs between the hours of 12:00 a.m. and 6:00 a.m. will not require such notice to Subscribers.

- x. **Disconnection/Downgrades.** A Subscriber may terminate service at any time. A Grantee will promptly disconnect from the Grantee's Cable system or downgrade any Subscriber who so requests. No charges for service may be made after the Subscriber requests disconnection, unless the Subscriber is under a contract for such level of services with Grantee. No period of notice before voluntary termination or downgrade of Cable service may be required of Subscribers by any Grantee. There will be no charge for disconnection and any downgrade charges will conform to applicable law.
- y. **Security Deposit.** Any security deposit and/or other funds due a Subscriber that disconnects service will be returned to the Subscriber within thirty (30) days or in the next billing cycle, whichever is later, from the date disconnection or downgrade was requested except in cases where the Subscriber does not permit the Grantee to recover its equipment, in which case the amounts owed will be paid to Subscribers within thirty (30) days of the date the equipment was recovered, or in the next billing cycle, whichever is later.
- z. **Disconnection due to Nonpayment.** A Grantee may not disconnect a Subscriber's Cable service for non-payment unless:
 - i. The Subscriber is delinquent in payment for Cable service;
 - ii. A separate, written notice of impending disconnection has been sent to the Subscriber at least twenty (20) days before the date on which service may be disconnected, at the premises where the Subscriber requests billing, which notice must identify the name and address of the Subscriber whose account is delinquent, state the date by which disconnection may occur if payment is not made, and the amount the Subscriber must pay to avoid disconnection, and a telephone number of a representative of the Grantee who can provide additional information and handle Complaints or initiate an investigation concerning the services and charges in question;
 - iii. The Subscriber fails to pay the amounts owed to avoid disconnection by the date of disconnection; and
 - iv. No pending inquiry exists regarding the bill to which Grantee has not responded in writing.
 - v. If the Subscriber pays all amounts due, including late charges, before the date scheduled for disconnection, the Grantee will not disconnect service. Service may only be terminated on days in which the Customer can reach a representative of the Grantee either in person or by telephone.

- vi. The Grantee will promptly reinstate service after disconnection (except as noted below) upon payment by the Subscriber in full of all proper fees or charges, including the payment of the reconnection charge, if any.
- aa. **Immediate Disconnection.** A Grantee may immediately disconnect a Subscriber if:
- i. The Subscriber is damaging, destroying, or unlawfully tampering with or has damaged or destroyed or unlawfully tampered with the Grantee's Cable System;
 - ii. The Subscriber is not authorized to receive a service, and is facilitating, aiding or abetting the unauthorized receipt of service by others; or
 - iii. Subscriber-installed or attached equipment is resulting in signal leakage that is in violation of FCC rules.
 - iv. After disconnection, the Grantee will restore service after the Subscriber provides adequate assurance that it has ceased the practices that led to disconnection, and paid all proper fees and charges, including any reconnect fees and all amounts owed the Grantee for damage to its Cable system or equipment. Provided that, no reconnection fee may be imposed on a Subscriber disconnected pursuant to this article if the leakage was the result of the Grantee's acts or omissions; or in any case unless the Grantee notifies the Subscriber of the leakage at least three (3) business days in advance of disconnection, and the Subscriber has failed to correct the leakage within that time.
- bb. **Grantee's Property.** Except as applicable law may otherwise provide, a Grantee may remove its property from a Subscriber's premises within thirty (30) days of the termination of service. If a Grantee fails to remove its property in that period, the property will be deemed abandoned unless the Grantee has been denied access to the Subscriber's premises, or the Grantee has a continuing right to occupy the premises under applicable law.
- cc. **Deposits.** A Grantee may require a reasonable, non-discriminatory deposit on equipment provided to Subscribers. Deposits will be placed in an interest-bearing account, and the Grantee will return the deposit, plus interest earned to the date the deposit is returned to the Subscriber, less any amount the Grantee can demonstrate should be deducted for damage to such equipment.
- dd. **Parental Control Option.** Without limiting a Grantee's obligations under Federal law, a Grantee must provide parental control devices at no charge to all Subscribers who request them that enable the Subscriber to block the video and audio portion of any Channel or Channels of programming.

2. **Regulation of Service Rates.** The City may regulate rates for the provision of Cable Service, equipment, or any other communications service provided over the System to the extent allowed under federal or State law(s). The City reserves the right to regulate rates for any future services to the extent permitted by law.

SECTION 6.

ACCESS CHANNEL(S) PROVISIONS

1. **Number of PEG Access Channels.** Within one hundred eighty (180) days from Effective Date of this Agreement, Grantee will make available a minimum of 6 PEG Access Channels for the Franchise term and shall offer them in Standard Definition (SD) format. Grantee shall provide the Access Channels on the Basic Tier or such other most-basic tier of service as may be offered by Grantee in accordance with the Cable Act, Section 611, and as further set forth in this Section 6. In no event shall one cable operator in the City be required to provide more PEG channels than another cable operator. For purposes of this Section, a PEG Channel simulcast in SD and High Definition (HD) shall be considered a single PEG Channel.
 - a. PEG Access Channels and programming may be delivered by City to Grantee in SD or HD format. Grantee shall provide all necessary transmission equipment from the demarcation point and throughout Grantee's distribution system, in order to deliver the PEG Access Channels to Subscribers.
 - b. For purposes of this Franchise, an HD signal refers to a television signal delivering picture resolution of either 720p or greater, or such other resolution in this same range that company utilizes for other similar non-sport, non-movie programming channels on the Cable System, whichever is greater.
 - c. Grantee shall make the PEG Access Channels available to Subscribers in both SD and HD format to the extent the City delivers the signal in an HD format that is compatible with Grantee's Cable System.
 - d. The provision of an HD channel does not eliminate the Grantee's obligation to provide PEG in SD. While PEG access signals may be delivered to Grantee in multiple formats, if a signal is delivered in HD, Grantee will down-convert the signal as necessary to provide such signal in SD. Grantee is not required to convert a signal delivered in a lower quality format to a higher quality format. Designated entities have no obligation to provide a signal to the Grantee in a digital format.
 - e. All PEG access channels must be receivable by Subscribers without special expense in addition to the expense paid to receive commercial services the subscriber receives. City acknowledges that HD programming may require the viewer to have special viewer equipment (such as an HDTV and an HD-capable digital device/receiver), but any Subscriber who can view an HD signal delivered

via the cable system at a receiver shall also be able to view the HD PEG channels at that receiver, without additional charges or equipment. By agreeing to make PEG available in HD format, Company is not agreeing to provide free HD equipment to customers including complimentary municipal and educational accounts, except as otherwise noted in this franchise, nor to modify its equipment or pricing policies in any manner. City acknowledges that not every customer may be able to view HD PEG programming (for example, because they do not have an HDTV in their home or have chosen not to take an HD capable receiving device from Company or other equipment provider) or on every television in the home.

- f. Grantee will provide a bill message announcing the launch of the PEG channels; however the City acknowledges that not all customers may receive the bill message notice in advance of the channel launch in the interests of launching the channels sooner.
 - g. Any costs of end-user equipment associated with the delivery of SD PEG channels in HD format beyond the Demarcation Point shall be borne by the Grantor, and may be paid for out of PEG funds.
 - h. The City is responsible for acquiring all equipment necessary to produce programming in HD and may be paid for out of PEG funds.
 - i. Grantee shall have the right to use any technology to deploy or deliver HD signals (including selection of compression, utilization of IP and other processing characteristics) so long as it produces signal quality for the consumer that is reasonably comparable (from the viewer's standpoint) and functionally equivalent to similar commercial HD signals carried on the cable system.
2. **Control of PEG Access Channels.** The control and administration of the PEG Access Channels shall rest with the City. The City may delegate, from time to time over the term of this Franchise, such control and administration to various entities as determined in City's sole discretion.
3. **Transmission of Access Channels.** PEG Access Channels may be used for transmission of non-video signals in compliance with Applicable Laws. This may include downstream transmission of data using a protocol such as TCP/IP or current industry standards. Should Grantee develop the capability to provide bi-directional data transmission, spectrum capacity shall be sufficient to allow Subscribers to transmit data to PEG facilities.
4. **PEG Channel Locations.** PEG Access Channels shall be carried on the Basic Cable Service tier as set forth in Section 6(1) herein. Nothing herein precludes the Grantee from charging for equipment needed for Basic Cable Service.

- a. The Grantee will not change the current channel positions of public (channels 14 & 15), government (channel 16), the regional channel (channel 6), or educational (channel 18, 19 & 20) access channels, unless new locations are mutually agreed upon by the Grantee and City or required by state or federal law. Other PEG signals will be grouped with other local broadcast channels; if local broadcast channels are grouped based in part on format, PEG and local broadcast channels carried in the same format will be grouped together. If it is not possible to group PEG and local broadcast channels together, PEG channels will be grouped in some other manner reasonably acceptable to City.
- b. Grantee agrees not to encrypt the PEG Access Channels differently than other commercial Channels available on the Cable System.

5. **Navigation to Access Channels/Electronic Programming Guides.** Grantee agrees that if it utilizes a visual interface under its control on its Cable System for all Channels, the PEG Access Channels shall be treated in a non-discriminatory fashion consistent with Applicable Laws so that Subscribers will have ready access to PEG Access Channels. Grantee will continue to make available to Grantor the ability to place PEG channel programming information on the interactive channel guide via the electronic programming guide (“EPG”) vendor (“EPG provider”) that Grantee utilizes to provide the guide service at City’s sole cost and expense. The City shall be responsible for providing programming information to the EPG provider and for any costs the EPG provider charges to programmers who utilize its service. This obligation shall not apply to any PEG channel for which there is a technical impediment to providing guide listings, for example, in the event a PEG channel is narrowcasted or split among more than one PEG programmer or source such that not all viewers see the same programming on that channel.
6. **Ownership of Access Channels.** Grantee does not relinquish its ownership of or ultimate right of control over a Channel by designating it for PEG use. A PEG access user – whether an individual, educational or governmental user – acquires no property or other interest by virtue of the use of a Channel position so designated. Grantee shall not exercise editorial control over any public, educational, or governmental use of a Channel position, except Grantee may refuse to transmit any public access program or portion of a public access program that contains obscenity, indecency, or nudity in violation of Applicable Law.
7. **Noncommercial Use of PEG.** Permitted noncommercial uses of the PEG Access Channels shall include by way of example and not limitation: (1) the identification of financial supporters similar to what is provided on public broadcasting stations; or (2) the solicitation of financial support for the provision of PEG programming by the City or third party users for charitable, educational or governmental purposes; or (3) programming offered by accredited, non-profit, educational institutions which may, for example, offer telecourses over a PEG Access Channel.
8. **Dedicated Fiber Lines.** The Grantee acknowledges that the City has obtained the right to use of certain fiber paths via its franchise with the incumbent cable provider (an I-Net) which may be utilized to facilitate PEG origination/return capacity in the City. To the extent the City

identifies additional or new institutional sites in the Franchise Area from which PEG Access programming or electronic data will be originated, the Grantee shall provide a connection to such site(s) permitting such transmissions from the point of origination to City Hall for editing, playback and further distribution to all Subscribers, or other public purposes. With respect to any request by the City under this Section 6(8), the City shall recognize that the incumbent cable provider was partially reimbursed for the initial construction of the I-Net through a direct payment from the City, recognize the relative market positions of both the incumbent cable operator and the Grantee at the time such request is made, and ensure that any request made of Grantee under this Section 6(8) fully complies with the FCC Report and Order re: Implementation of Section 621(a)(1) of the Cable Communications Policy Act et. seq., MB Docket No. 05-311 (the "Order").

9. **Ancillary Equipment.** Any ancillary equipment operated by Grantee for the benefit of PEG Access Channels on Grantee's fiber paths or Cable System, whether referred to as switchers, routers or other equipment, will be maintained by Grantee, at no cost to the City or schools for the life of the Franchise. Grantee is responsible for any ancillary equipment on its side of the demarcation point and the City or school is responsible for all other production/playback equipment.

10. **Access Channel Carriage.**

- a. Grantee shall provide all necessary transmission equipment from the demarcation point and throughout Grantee's distribution system in order to deliver the PEG Access Channels. Any and all costs associated with any modification of the Access Channels or signals after the Access Channels/signals leave the City's designated playback facilities, or any designated playback center authorized by the City shall be borne entirely by Grantee. Grantee shall not cause any programming to override PEG programming on any Access Channel, except by oral or written permission from the City, with the exception of emergency alert signals.
- b. The City may request and Grantee shall provide an additional Access Channel whenever one (1) of the Access Channels is in use during eighty percent (80%) of the weekdays, Monday through Friday, for eighty percent (80%) of the time during a consecutive three (3) hour period for six (6) weeks running, and there is a demand for use of an additional Channel for the same purpose. The Grantee has six (6) months in which to provide a new, Access Channel.
- c. The VHF spectrum shall be used for one (1) of the public, educational, or governmental specially designated Access Channels.
- d. The City or its designee shall be responsible for developing, implementing, interpreting and enforcing rules for PEG Access Channel use.
- e. The Grantee shall monitor the Access Channels for technical quality to ensure that they meet FCC technical standards including those applicable to the carriage of Access Channels, provided however, that the Grantee is not responsible for the production quality of PEG programming productions. The City, or its designee, shall

be responsible for the production and quality of all PEG access programming. Grantee shall carry all components of the standard definition of Access Channel including, but not limited to, closed captioning, stereo audio and other elements associated with the programming.

11. Access Channel Support.

- a. Effective with the first Subscriber bill after the Effective Date of this Franchise, Grantee will provide the following capital grant for PEG use for so long as it continues to operate under this franchise:

2.5% of Gross revenues paid quarterly based upon revenues for the calendar quarter. In no event shall the Grantee be required to remit a higher PEG fee to, or use a different methodology to calculate the PEG fee for, the City than any other franchised cable operator.

- b. The PEG Fee may be used by City to fund PEG expenditures in accordance with Applicable Law.

The PEG Fee is not part of the Franchise Fee and instead falls within one or more of the exceptions in 47 U.S.C. § 542. The PEG Fee may be categorized, itemized, and passed through to Subscribers as permissible, in accordance with 47 U.S.C. § 542 or other Applicable Laws. Grantee shall pay the PEG Fee to the City quarterly at the same time as the payment of Franchise Fees under Section 8(4) of the Franchise. Grantee agrees that it will not offset or reduce its payment of past, present or future Franchise Fees required as a result of its obligation to remit the PEG Fee.

12. PEG Technical Quality.

- a. Grantee shall not be required to carry a PEG Access Channel in a higher quality format than that of the Channel Signal delivered to Grantee, but Grantee shall not implement a change in the method of delivery of Access Channels that results in a material degradation of signal quality or impairment of viewer reception of Access Channels, provided that this requirement shall not prohibit Grantee from implementing new technologies also utilized for commercial Channels carried on its Cable System. Grantee shall meet FCC signal quality standards when offering Access Channels on its Cable System and shall continue to comply with closed captioning pass-through requirements. There shall be no significant deterioration in an Access Channels signal from the point of origination upstream to the point of reception downstream on the Cable System.
- b. Within twenty-four (24) hours of a written or e-mailed request from City to the Grantee identifying a technical problem with a Access Channel and requesting assistance, Grantee will provide technical assistance or diagnostic services to determine whether or not a problem with a PEG signal is the result of matters for which Grantee is responsible and if so, Grantee will take prompt corrective action at no cost to the City. If the problem persists and there is a dispute about the cause, then

the parties shall meet with engineering representation from Grantee and the City in order to determine the course of action to remedy the problem.

13. **Access Channel Promotion.** Grantee shall allow the City to place bill stuffers in Grantee's Subscriber statements once per year, or at such time as a Access Channel is moved or relocated, upon the written or e-mailed request of the City and at such times that the placement of such materials would not materially and adversely affect Grantee's cost for the production and mailing of such statements.

Grantee will provide the City with no fewer than ten (10) and no more than twelve (12) ad avails each year at no cost to promote programming on the City's PEG Channels. This requirement shall only apply to the extent Grantee has not filled the ad slots with other paid advertising. Grantee shall not be required to remove, or relocate purchased ad slots for the City. The ad avails will be produced at the City's cost and submitted to Grantee in a format compatible with such advertising insertion equipment of Grantee. The ad avails will be a run of schedule basis and shall appear on channels used by Grantee for local advertising.

14. **Change in Technology.** In the event Grantee makes any change in the Cable System and related equipment and facilities or in its signal delivery technology, which requires the City to obtain new equipment in order to be compatible with such change for purposes of transport and delivery of the Access Channels, Grantee shall, at its own expense and free of charge to City or its designated entities, purchase such equipment as may be necessary to facilitate the cablecasting of the Access Channels in accordance with the requirements of the Franchise.
15. **Relocation of Grantee's Headend.** In the event Grantee relocates its headend, Grantee will be responsible for replacing or restoring the existing dedicated fiber connections at Grantee's cost so that all the functions and capacity remain available, operate reliably and satisfy all applicable technical standards and related obligations of the Franchise free of charge to the City or its designated entities.
16. **Regional Channel Six.** Grantee shall make available Regional Channel Six as long as it is required to do so by Applicable Law.
17. **Compliance with Minnesota Statutes Chapter 238.** In addition to the requirements contained in this Section 6 of this Franchise, Grantee and City shall comply with the PEG requirements mandated by Minn. Stat. § 238.084.

SECTION 7.

GRANTEE COMPLIMENTARY SERVICE COMMITMENTS

1. Subscriber Network Drops to Designated Buildings.

- a. Grantee shall provide or maintain, free of charge, the following at those institutions listed in Exhibit B :
 - (i) Installation and activation of one (1) Drop and one (1) cable outlet;
 - (ii) Such Converters as may be necessary to receive service on all outlets. Such Converters shall be capable of receiving high definition (HD) format video services, if necessary and requested, and;
 - (iii) Basic Cable Service, the next highest level of Service generally available to all Subscribers, and any HD service tier carrying PEG Access Channels

(together, “Complimentary Service”). Grantee shall only be required to provide the services described above if the institutions are not currently served by another cable operator provided, however, that Grantee shall provide duplicative Complimentary Service to City Hall and will endeavor to provide such service at any other institutions seeking to monitor PEG Channels on all cable systems operating in the City.
- b. Additional Drops and/or outlets will be installed at designated institutions by the Grantee on an Actual Cost basis. Alternatively, said institution may add outlets at its own expense, as long as such Installation meets the Grantee’s standards. The Grantee shall have ninety (90) days from the date of designation of additional institution(s) to complete construction of the Drop and outlet, unless weather or other conditions beyond the control of the Grantee require more time.

SECTION 8.

OPERATION AND ADMINISTRATION PROVISIONS

1. Administration of Franchise. The City’s designated cable television administrator, or designee, shall have continuing regulatory jurisdiction and supervision over the System and the Grantee’s operation under the Franchise. The City may issue such reasonable rules and regulations concerning the construction, operation and maintenance of the System as are consistent with the provisions of the Franchise and Applicable Law.
2. Delegated Authority. The City may appoint a Commission, or may delegate to any other body or Person, authority to administer the Franchise and to monitor the performance of the Grantee pursuant to the Franchise. The Grantee shall cooperate with any such delegate of the City.

3. Franchise Fee.

- a. During the term of the Franchise, Grantee shall pay to the City a Franchise Fee of five percent (5%) of Gross Revenues. If any law, regulation or valid rule alters the Franchise Fee ceiling pursuant to Applicable Law, then the City shall have the authority to (but shall not be required to) increase the Franchise Fee accordingly.
- b. Nothing in this Franchise shall be construed to limit any authority of the City to impose any tax, fee or assessment of general applicability.
- c. The Franchise Fee payments required by this Franchise shall be in addition to any and all taxes or fees of general applicability. The Grantee shall not have, make, or seek any claim for any deduction or other credit of all or any part of the amount of said Franchise Fee payments from or against any of said taxes or fees of general applicability, or any other payment obligation to the City, nor shall apply any such deduction or credit, except as expressly permitted by Applicable Law. The Grantee shall not apply or seek to apply all or any part of the amount of any of said taxes or fees of general applicability, or any other payment obligation to the City, as a deduction or other credit from or against any of its Franchise Fee obligations, except as expressly permitted by Applicable Law.

4. Franchise Fee and PEG Fee Payments.

- a. Franchise Fee and PEG Fee payments due under this Franchise shall be payable quarterly. Such payments shall be made within thirty (30) days of the end of each calendar quarter together with a report showing the basis for the computations. The City shall, upon written request, have a right to further supporting information for each payment.
- a. All amounts paid by Grantee shall be subject to audit and recomputation by City or its designee, and acceptance of any payment shall not be construed as an accord that the amount paid is in fact the correct amount or a waiver of any claim that the City may be entitled to additional sums. The Grantee shall be responsible for providing the City all records necessary to confirm the accurate payment of Franchise Fees. The Grantee shall maintain such records for six (6) years.
- b. If an audit discloses an overpayment or underpayment, the City shall notify the Grantee of such overpayment or underpayment. The City's audit expenses shall be borne by the City unless the audit determines that the payment to the City should be increased by more than five percent (5%) in the audited period, in which case the costs of the audit shall be borne by the Grantee as a cost incidental to the enforcement of the Franchise not to exceed \$5,000. Any additional amounts due to the City as a result of the audit shall be paid to the City within thirty (30) days following written notice to the Grantee by the City of the underpayment, which notice shall include a copy of the audit report. If the recomputation results in additional payment

to the City, such amount shall be subject to a twelve percent (12%) annual interest charge.

- c. In the event any Franchise Fee or PEG Fee payment or recomputation amount is not made on or before the required date, the Grantee shall pay, during the period such unpaid amount is owed, the additional compensation and interest charges computed from such due date, at an annual rate of twelve percent (12%).
- d. In the event Grantee makes any change in policy or accounting methodology regarding Grantee's calculation of Franchise Fees or PEG Fees, Grantee shall notify the City of such change in writing, as soon as is reasonably feasible but in no event later than the first payment of fees impacted by any such change.

5. Access to Records. The City shall have the right to inspect, upon reasonable notice and during Grantee's administrative office hours, or require Grantee to provide within a reasonable time, not to exceed seven (7) days on a confidential and proprietary basis, copies of any records maintained by Grantee or its Affiliates, including specifically Gross Revenues worksheets, and accounting and financial records maintained by Grantee which relate to compliance of System operations with this Franchise or other Applicable Law.

6. Reports and Maps to be Filed with City.

- a. The Grantee shall file with the City, at the time of payment of the Franchise Fee and PEG Fee, a report of all Gross Revenues and the number of Subscribers paying the PEG Fee, in a form and substance as required by City.
- b. The Grantee shall prepare and furnish to the City, at the times and in the form prescribed, such other reports with respect to Grantee's operations pursuant to this Franchise as the City may require. The City shall use its best efforts to protect proprietary or trade secret information all consistent with state and federal law.
- c. If required by the City, the Grantee shall furnish to and file with the City the maps, plats, and permanent records of the location and character of all facilities constructed, including underground facilities, and Grantee shall file with the City updates of such maps, plats and permanent records annually if changes have been made in the System.
- d. Unless otherwise specified in the Franchise, all reports, records and maps required hereunder shall be furnished to the City within 30 calendar days of the City's request or requirement. Failure to do so, shall result in Grantee being subject to liquidated damages, pursuant to Section 9(2)(c)(ii)

7. Periodic Evaluation.

- a. The City may require evaluation sessions at any time during the term of this Franchise, upon fifteen (15) days written notice to the Grantee.

- b. Topics which may be discussed at any evaluation session may include, but are not limited to, application of new technologies, System performance, programming offered, access channels, facilities and support, municipal uses of cable, subscriber rates, customer complaints, amendments to this Franchise, judicial rulings, FCC rulings, line extension policies and any other topics the City deems relevant.
- c. As a result of a periodic review or evaluation session, upon notification from City, Grantee shall meet with City and undertake good faith efforts to reach agreement on changes and modifications to the terms and conditions of the Franchise which are both economically and technically feasible.

SECTION 9.

GENERAL FINANCIAL AND INSURANCE PROVISIONS

1. Performance Bond.

- a. On or before the Effective Date and at all times thereafter until the Grantee has liquidated all of its obligations with the City, the Grantee shall furnish a bond in the amount of one hundred thousand dollars (\$100,000.00) in a form and with such sureties as are reasonably acceptable to the City. This bond will be conditioned upon the faithful performance by the Grantee of its Franchise obligations and upon the further condition that in the event the Grantee shall fail to comply with any law, ordinance or regulation governing the Franchise, there shall be recoverable jointly and severally from the principal and surety of the bond any damages or loss suffered by City as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the Grantee, plus a reasonable allowance for attorneys' fees and costs, up to the full amount of the bond, and further guaranteeing payment by the Grantee of claims, liens and taxes due the City which arise by reason of the construction, operation, or maintenance of the System. The City may, from year to year, in its sole discretion, reduce the amount of the bond.
- b. The time for Grantee to correct any violation or liability shall be extended by City if the necessary action to correct such violation or liability is, in the sole determination of City, of such a nature or character as to require more than thirty (30) days within which to perform, provided Grantee provides written notice that it requires more than thirty (30) days to correct such violations or liability, commences the corrective action within the thirty (30) day cure period and thereafter uses reasonable diligence to correct the violation or liability.
- c. In the event this Franchise is revoked by reason of default of Grantee, City shall be entitled to collect from the performance bond that amount which is attributable to any damages sustained by City as a result of said default or revocation.

- d. Grantee shall be entitled to the return of the performance bond, or portion thereof, as remains sixty (60) days after the expiration of the term of the Franchise or revocation for default thereof, provided City has not notified Grantee of any actual or potential damages incurred as a result of Grantee's operations pursuant to the Franchise, or as a result of said default.
- e. The rights reserved to City with respect to the performance bond are in addition to all other rights of City whether reserved by this Franchise or authorized by law, and no action, proceeding or exercise of a right with respect to the performance bond shall affect any other right City may have.

2. Letter of Credit.

- a. On the Effective Date of this Franchise, the Grantee shall deliver to the City an irrevocable and unconditional Letter of Credit, in a form and substance acceptable to the City, from an FDIC-insured bank approved by the City, in the amount of twenty five thousand dollars (\$25,000.00).
- b. The Letter of Credit shall provide that funds will be paid to the City upon written demand of the City, and in an amount solely determined by the City in payment for liquidated damages pursuant to this Section, in payment for any monies owed by the Grantee to the City pursuant to its obligations under this Franchise, or in payment for any damage incurred by the City as a result of any acts or omissions by the Grantee pursuant to this Franchise.
- c. In addition to recovery of any monies owed by the Grantee to the City or any Person or damages to the City or any Person as a result of any acts or omissions by the Grantee pursuant to the Franchise, the City may charge to and collect from the Letter of Credit the following liquidated damages:
 - i. For failure to operate and maintain the System as provided in this Franchise, five hundred dollars (\$500.00) per day for each day, or part thereof, such failure occurs or continues.
 - ii. For failure to provide data, documents, reports or information or to cooperate with City during an application process or system review or as otherwise provided herein, two hundred and fifty dollars (\$250.00) per day for each day, or part thereof, such failure occurs or continues.
 - iii. For failure to provide the services or payments required by this Franchise, five hundred dollars (\$500.00) per day for each day, or part thereof, such failure occurs or continues.
 - iv. For Grantee's breach of any written contract or agreement with or to the City, five hundred dollars (\$500.00) per day for each day, or part thereof, such breach occurs or continues.

- v. For failure to comply with the standards set forth in Section 5 (Customer Service Standards), two hundred and fifty dollars (\$250.00) per day for each day, or part thereof, such failure occurs or continues.
 - vi. For failure to comply with any of the provisions of this Franchise for which liquidated damages are not otherwise specified in this paragraph (c), two hundred and fifty dollars (\$250.00) per day for each day or part thereof, such failure occurs or continues.
- d. Each violation of any provision of this Franchise shall be considered a separate, independent violation. The City shall impose the same liquidated damages provisions on any other franchised cable operators in the City.
- e. Whenever the City determines that the Grantee has violated one or more terms, conditions or provisions of this Franchise, or for any other violation contemplated in subparagraph (c) above, a written notice shall be given to Grantee informing it of such violation. At any time after thirty (30) days (or such longer reasonable time which, in the determination of the City, is necessary to cure the alleged violation) following receipt of notice, provided the Grantee remains in violation of one or more terms, conditions or provisions of this Franchise, in the sole opinion of the City, the City may draw from the Letter of Credit.
- f. Whenever the Letter of Credit is drawn upon, the Grantee may, within seven (7) days of the withdrawal, notify the City in writing that there is a dispute as to whether a violation or failure has in fact occurred. Such written notice by the Grantee to the City shall specify with particularity the matters disputed by Grantee. All liquidated damages shall continue to accrue and the City may continue to draw from the Letter of Credit during any appeal pursuant to this subparagraph (f).
 - i. City shall hear Grantee's dispute within sixty (60) days and the City shall render a final decision within sixty (60) days thereafter.
 - ii. Upon the determination of the City that no violation has taken place, the City shall refund to Grantee, without interest, all monies drawn from the Letter of Credit by reason of the alleged violation.
- g. If said Letter of Credit or any subsequent Letter of Credit delivered pursuant thereto expires prior to thirty (30) months after the expiration of the term of this Franchise, it shall be renewed or replaced during the term of this Franchise to provide that it will not expire earlier than thirty (30) months after the expiration of this Franchise. The renewed or replaced Letter of Credit shall be of the same form and with a bank authorized herein and for the full amount stated in paragraph (a) of this Section.
- h. If the City draws upon the Letter of Credit or any subsequent Letter of Credit delivered pursuant hereto, in whole or in part, the Grantee shall replace or replenish to

its full amount the same within ten (10) days and shall deliver to the City a like replacement Letter of Credit or certification of replenishment for the full amount stated in Section 9(2)(a) as a substitution of the previous Letter of Credit. This shall be a continuing obligation for any withdrawals from the Letter of Credit.

- i. if any Letter of Credit is not so replaced or replenished, the City may draw on said Letter of Credit for the whole amount thereof and use the proceeds as the City determines in its sole discretion. The failure to replace or replenish any Letter of Credit may also, at the option of the City, be deemed a default by the Grantee under this Franchise. The drawing on the Letter of Credit by the City, and use of the money so obtained for payment or performance of the obligations, duties and responsibilities of the Grantee which are in default, shall not be a waiver or release of such default.

The collection by City of any damages, monies or penalties from the Letter of Credit shall not affect any other right or remedy available to it, nor shall any act, or failure to act, by the City pursuant to the Letter of Credit, be deemed a waiver of any right of the City pursuant to this Franchise or otherwise.

3. Indemnification of City.

- a. The City and its officers, boards, committees, commissions, elected and appointed officials, employees, volunteers and agents shall not be liable for any loss or damage to any real or personal property of any Person, or for any injury to or death of any Person, arising out of or in connection with Grantee's construction, operation, maintenance, repair or removal of the System or as to any other action of Grantee with respect to this Franchise.
- b. Grantee shall indemnify, defend, and hold harmless the City and its officers, boards, committees, commissions, commissioners, elected and appointed officials, employees, volunteers and agents, from and against all liability, damages, and penalties which they may legally be required to pay as a result of the City's exercise, administration, or enforcement of the Franchise.
- c. Nothing in this Franchise relieves the City from liability arising out of the failure to exercise reasonable care to avoid injuring the Grantee's facilities while performing work connected with grading, regrading, or changing the line of a Right-of-Way or public place or with the construction or reconstruction of a sewer or water system.
- d. Related only to PEG programming, the Grantee shall not be required to indemnify the City for negligence or misconduct on the part of the City, or its officers, boards, committees, commissions, commissioners, elected or appointed officials, employees, volunteers or agents, including any loss or claims.
- e. Nothing in this Franchise, including specifically this Section 9(3), shall be interpreted as a waiver by the City of any of its defenses of immunity or

limitations on liability under Minnesota Statutes, Chapter 466 or otherwise, and the City expressly reserves all rights in this regard.

4. Insurance.

- a. Grantee shall file with City at the time of its acceptance of this Franchise, and at all times thereafter maintain in full force and effect at its sole expense, a commercial general liability insurance policy, including and contractual liability coverage, in protection of the Grantee, the City and its officers, boards, commissions, commissioners, elected and appointed officials, agents, employees, volunteers and agents for any and all damages and penalties which may arise as a result of this Franchise or operations under this Franchise. The policy shall be issued by a company authorized to do business in the state of Minnesota with a rating by A.M. Best & Co. of not less than “A-” and shall list as additional insureds the City, City officials, boards, commissions, agents, employees, and volunteers in their capacity as additional insureds.
- e. The policy of insurance shall provide single limit coverage applying to bodily and personal injury and property damage in amount not less than \$1,500,000 for personal injury or death to any one person, and not less than \$1,500,000 for property damage to any one person. The liability policy shall:
 1. Provide coverage on an “occurrence” basis.
 2. Cover blanket contractual liability subject to the standard universal exclusions of contractual liability included in the carrier’s standard endorsement as to bodily injuries, personal injuries and property damage.
 3. Afford broad form property damage liability coverage.
 4. Include an endorsement which states that the coverage is primary insurance with respect to claims arising from Grantee’s operations under this Franchise and that no other insurance maintained by the City will be called upon to contribute to a loss under this coverage.
 5. Provide standard form of cross-liability coverage.
 6. Include an endorsement stating that the policy shall not be canceled without thirty (30) days’ notice of such cancellation given to City.
- f. City reserves the right to adjust the insurance limit coverage requirements of this Franchise no more than once every three (3) years.
- g. Grantee shall submit to City a certificate documenting the required insurance, as well as any necessary properly executed endorsements, in a form acceptable to City and providing satisfactory evidence that Grantee has complied with all insurance requirements. Renewal certificates shall be provided to City prior to

the expiration date of any of the required policies. Receipt thereof shall not relieve Grantee from, nor be deemed a waiver of, City's right to enforce the terms of Grantee's obligations hereunder. City reserves the right to examine any policy provided for under this paragraph or to require further documentation reasonably necessary to form an opinion regarding the adequacy of Grantee's insurance coverage.

SECTION 10.

SALE, ABANDONMENT, TRANSFER AND REVOCATION OF FRANCHISE

1. City's Right to Revoke.

- a. In addition to all other rights which City has pursuant to law or equity, City reserves the right to commence proceedings to revoke, terminate or cancel this Franchise, and all rights and privileges pertaining thereto, if it is determined by City that:
 - i. Grantee has violated material provisions(s) of this Franchise; or
 - ii. Grantee has attempted to evade any of the provisions of the Franchise; or
 - iii. Grantee has practiced fraud or deceit upon City.

City may revoke this Franchise without the hearing required by Section 10(2)(b) herein if Grantee is adjudged a bankrupt.

2. Procedures for Revocation.

- a. The City shall provide the Grantee with written notice of a cause for revocation and the intent to revoke and shall allow Grantee thirty (30) days subsequent to receipt of the notice in which to correct the violation or to provide adequate assurance of performance in compliance with the Franchise. In the notice required herein, the City shall provide the Grantee with the basis for revocation.
- b. The Grantee shall be provided the right to a public hearing affording due process before the City Council prior to the effective date of revocation, which public hearing shall follow the thirty (30) day notice provided in subparagraph (a) above. The City shall provide the Grantee with written notice of its decision together with written findings of fact supplementing said decision.
- c. Only after the public hearing and upon written notice of the determination by the City to revoke the Franchise may the Grantee appeal said decision with an appropriate state or federal court or agency.

d. During the appeal period, the Franchise shall remain in full force and effect unless the term thereof sooner expires or unless continuation of the Franchise would endanger the health, safety and welfare of any person or the public.

3. **Abandonment of Service.** The Grantee may only abandon the System or any portion thereof in accordance with Minn. Stat. Section 238.084, Subd. 1(w).

4 **Removal After Abandonment, Termination or Forfeiture.**

a. In the event of termination or forfeiture of the Franchise or abandonment of the System, the City shall have the right to require the Grantee to remove all or any portion of the System from all Rights-of-Way and public property within the City provided, however, that if Grantee is providing services other than Cable Services or pursuant to Minnesota Statutes, Section 237.01 et seq., City shall not require the removal of the System. Nothing in this Section shall be deemed either to grant or to preclude the provision of services other than Cable Services.

b. If the Grantee has failed to commence removal of the System, or such part thereof as was designated by the City, within thirty (30) days after written notice of the City's demand for removal is given, or if the Grantee has failed to complete such removal within twelve (12) months after written notice of the City's demand for removal is given, the City shall have the right to apply funds secured by the Letter of Credit and Performance Bond toward removal and/or declare all right, title, and interest to the System to be in the City with all rights of ownership including, but not limited to, the right to operate the System or transfer the System to another for operation by it.

5. **Sale or Transfer of Franchise.**

a. No sale or transfer of the Franchise, or sale, transfer, or fundamental corporate change of or in Grantee, including, but not limited to, a fundamental corporate change in Grantee's parent corporation or any entity having a controlling interest in Grantee, the sale of a controlling interest in the Grantee's assets, a merger including the merger of a subsidiary and parent entity, consolidation, or the creation of a subsidiary or affiliate entity, shall take place until a written request has been filed with the City requesting approval of the sale, transfer, or corporate change and such approval has been granted or deemed granted, provided, however, that said approval shall not be required where Grantee grants a security interest in its Franchise and/or assets to secure an indebtedness.

b. Any sale, transfer, exchange or assignment of stock in Grantee, or Grantee's parent corporation or any other entity having a controlling interest in Grantee, so as to create a new controlling interest therein, shall be subject to the requirements of this Section 10(5). The term "controlling interest" as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised. In any event, as used herein, a new "controlling interest" shall be deemed

to be created upon the acquisition through any transaction or related group of transactions of a legal or beneficial interest of fifteen percent (15%) or more by one Person. Acquisition by one Person of an interest of five percent (5%) or more in a single transaction shall require notice to the City.

- c. The Grantee shall file, in addition to all documents, forms and information required to be filed by Applicable Law, the following:
 - i. All contracts, agreements or other documents that constitute the proposed transaction and all exhibits, attachments, or other documents referred to therein which are necessary in order to understand the terms thereof.
 - ii. A list detailing all documents filed with any state or federal agency related to the transaction including, but not limited to, the MPUC, the FCC, the FTC, the FEC, the SEC or MnDOT. Upon request, Grantee shall provide City with a complete copy of any such document; and
 - iii. Any other documents or information related to the transaction as may be specifically requested by the City.
- d. The City shall have such time as is permitted by federal law in which to review a transfer request.
- e. Grantee shall reimburse City for all the reasonable legal, administrative, consulting costs and fees associated with the City's review of any request to transfer. Nothing herein shall prevent Grantee from negotiating partial or complete payment of such costs and fees by the transferee. Grantee may not itemize any such reimbursement on Subscriber bills, but may recover such expenses in its subscriber rates.
- f. In no event shall a sale, transfer, corporate change or assignment of ownership or control pursuant to subparagraph (a) or (b) of this Section be approved without the transferee becoming a signatory to this Franchise and assuming all rights and obligations hereunder.
- g. In the event of any proposed sale, transfer, corporate change, or assignment pursuant to subparagraph (a) or (b) of this Section, the City shall have the right to purchase the System for the value of the consideration proposed in such transaction. The City's right to purchase shall arise upon City's receipt of notice of the material terms of an offer or proposal for sale, transfer, corporate change, or assignment, which Grantee has accepted. Notice of such offer or proposal must be conveyed to City in writing and separate from any general announcement of the transaction.
- h. The City shall be deemed to have waived its right to purchase the System pursuant to this Section only in the following circumstances:

- i. If City does not indicate to Grantee in writing, within sixty (60) days of receipt of written notice of a proposed sale, transfer, corporate change, or assignment as contemplated in Section 10(5)(g) above, its intention to exercise its right of purchase; or
 - ii. It approves the assignment or sale of the Franchise as provided within this Section.
- i. No Franchise may be transferred if the City determines the Grantee is in noncompliance of the Franchise unless an acceptable compliance program has been approved by City. The approval of any transfer of ownership pursuant to this Section shall not be deemed to waive any rights of City to subsequently enforce noncompliance issues relating to this Franchise. A franchise transfer or change of control will not cause or result in a rate increase, new equipment charges, or increased equipment charges, and the City may condition its approval of the transfer or other transaction on a stipulation to that effect."

Any transfer or sale of the Franchise without the prior written consent of the City shall be considered to impair the City's assurance of due performance. The granting of approval for a transfer or sale in one instance shall not render unnecessary approval of any subsequent transfer or sale for which approval would otherwise be required.

SECTION 11.

PROTECTION OF INDIVIDUAL RIGHTS

1. **Discriminatory Practices Prohibited.** Grantee shall not deny service, deny access, or otherwise discriminate against Subscribers or general citizens on the basis of race, color, religion, national origin, sex, age, status as to public assistance, affectional preference, or disability. Grantee shall comply at all times with all other applicable federal, State, and city laws.
2. **Subscriber Privacy.**
 - a. No signals including signals of a Class IV Channel may be transmitted from a Subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the Subscriber. Such written permission shall be for a limited period of time not to exceed one (1) year which may be renewed at the option of the Subscriber. No penalty shall be invoked for a Subscriber's failure to provide or renew such authorization. The authorization shall be revocable at any time by the Subscriber without penalty of any kind whatsoever. Such permission shall be required for each type or classification of Class IV Channel activity planned for the purpose of monitoring individual viewing patterns or practices.

- b. No lists of the names and addresses of Subscribers or any lists that identify the viewing habits of Subscribers shall be sold or otherwise made available to any party other than to Grantee or its agents for Grantee's service business use or to City for the purpose of Franchise administration, and also to the Subscriber subject of that information, unless Grantee has received specific written authorization from the Subscriber to make such data available. Such written permission shall be for a limited period of time not to exceed one (1) year which may be renewed at the option of the Subscriber. No penalty shall be invoked for a Subscriber's failure to provide or renew such authorization. The authorization shall be revocable at any time by the Subscriber without penalty of any kind whatsoever.
- c. Written permission from the Subscriber shall not be required for the conducting of System wide or individually addressed electronic sweeps for the purpose of verifying System integrity or monitoring for the purpose of billing. Confidentiality of such information shall be subject to the provision set forth in subparagraph (b) of this Section.

SECTION 12.

UNAUTHORIZED CONNECTIONS AND MODIFICATIONS

1. **Unauthorized Connections or Modifications Prohibited.** It shall be unlawful for any firm, Person, group, company, corporation, or governmental body or agency, without the express consent of the Grantee, to make or possess, or assist anybody in making or possessing, any unauthorized connection, extension, or division, whether physically, acoustically, inductively, electronically or otherwise, with or to any segment of the System or to receive services of the System without Grantee's authorization.
2. **Removal or Destruction Prohibited.** It shall be unlawful for any firm, Person, group, company, or corporation to willfully interfere, tamper with, remove, obstruct, or damage, or assist thereof, any part or segment of the System for any purpose whatsoever, except for any rights the City may have pursuant to this Franchise or its police powers.
3. **Penalty.** Any firm, Person, group, company, or corporation found guilty of violating this Section may be fined not less than Twenty Dollars (\$20.00) and the costs of the action nor more than Five Hundred Dollars (\$500.00) and the costs of the action for each and every subsequent offense. Each continuing day of the violation shall be considered a separate occurrence.

SECTION 13.

MISCELLANEOUS PROVISIONS

1. **Franchise Renewal.** Any renewal of this Franchise shall be in accordance with applicable federal, State and local laws and regulations. The term of any renewed Franchise shall be limited to a period as provided in Minn. Stat. Section 238.084, Subd. 1(c).
2. **Work Performed by Others.** All applicable obligations of this Franchise shall apply to any subcontractor or others performing any work or services pursuant to the provisions of this Franchise; however, in no event shall any such subcontractor or other performing work obtain any rights to maintain and operate a System or provide Cable Service. The Grantee shall provide notice to the City of the name(s) and address(es) of any entity, other than Grantee, which performs substantial services pursuant to this Franchise.
3. **Amendment of Franchise Ordinance.** The Grantee and the City may agree, from time to time, to amend this Franchise. Such written amendments may be made subsequent to a review session pursuant to Section 8(7) or at any other time if the City and the Grantee agree that such an amendment will be in the public interest or if such an amendment is required due to changes in federal, State or local laws. Provided, however, nothing herein shall restrict the City's exercise of its police powers or the City's authority to unilaterally amend Franchise provisions to the extent permitted by law.
4. **Compliance with Federal, State and Local Laws.**
 - a. If any federal or State law or regulation shall require or permit City or Grantee to perform any service or act or shall prohibit City or Grantee from performing any service or act which may be in conflict with the terms of this Franchise, then as soon as possible following knowledge thereof, either party shall notify the other of the point in conflict believed to exist between such law or regulation. Grantee and City shall conform to State laws and rules regarding cable communications not later than one year after they become effective, unless otherwise stated, and to conform to federal laws and regulations regarding cable as they become effective.
 - b. In the event that federal or State laws, rules or regulations preempt a provision or limit the enforceability of a provision of this Franchise, the provision shall be read to be preempted to the extent and for the time, but only to the extent and for the time, required or necessitated by law. In the event such federal or State law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the City.
 - c. If any term, condition or provision of this Franchise or the application thereof to any Person or circumstance shall, to any extent, be held to be invalid or unenforceable, the

remainder hereof and the application of such term, condition or provision to Persons or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Franchise and all the terms, provisions and conditions hereof shall, in all other respects, continue to be effective and complied with provided the loss of the invalid or unenforceable clause does not substantially alter the agreement between the parties. In the event such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision which had been held invalid or modified is no longer in conflict with the law, rules and regulations then in effect, said provision shall thereupon return to full force and effect and shall thereafter be binding on Grantee and City without further action by the City.

- d. The City and Grantee shall, at all times during the term of this Franchise, including all extensions and renewals thereof, comply with applicable federal, State and local laws and regulations.

5. **Nonenforcement by City.** Grantee shall not be relieved of its obligations to comply with any of the provisions of this Franchise by reason of any failure or delay of City to enforce prompt compliance. City may only waive its rights hereunder by expressly so stating in writing. Any such written waiver by City of a breach or violation of any provision of this Franchise shall not operate as or be construed to be a waiver of any subsequent breach or violation.
6. **Rights Cumulative.** All rights and remedies given to City by this Franchise or retained by City herein shall be in addition to and cumulative with any and all other rights and remedies, existing or implied, now or hereafter available to City, at law or in equity, and such rights and remedies shall not be exclusive, but each and every right and remedy specifically given by this Franchise or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by City and the exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy.
7. **Grantee Acknowledgment of Validity of Franchise.** The Grantee has reviewed the terms and conditions of this Franchise with legal counsel. Grantee acknowledges and agrees that the Franchise terms and conditions are not unreasonable or arbitrary under current law, and Grantee represents it has the power to make and enter the terms and conditions contained in this Franchise.
8. **Force Majeure.** The Grantee shall not be deemed in default of provisions of this Franchise or the City Code where performance was rendered impossible by war or riots, labor strikes or civil disturbances, floods, or other causes beyond the Grantee's control, and the Franchise shall not be revoked or the Grantee penalized for such noncompliance, provided that the Grantee, when possible, takes immediate and diligent steps to bring itself back into compliance and to comply as soon as possible, under the circumstances, with the Franchise without unduly endangering the health, safety and integrity of the Grantee's employees or property, or the

health, safety and integrity of the public, the Rights-of-Way, public property or private property.

9 **Governing Law.** This Franchise shall be governed in all respects by the law of the State of Minnesota.

10 **Captions and References.**

a. The captions and headings of sections throughout this Franchise are intended solely to facilitate reading and reference to the sections and provisions of this Franchise. Such captions shall not affect the meaning or interpretation of this Franchise.

b. When any provision of the City Code is expressly mentioned herein, such reference shall not be construed to limit the applicability of any other provision of the City Code that may also govern the particular matter in question.

11 **Rights of Third Parties.** This Franchise is not intended to, and shall not be construed to, grant any rights to or vest any rights in third parties, unless expressly provided herein.

12 **Merger of Documents.** This Franchise, and the attachments hereto, constitute the entire Franchise agreement between the City and the Grantee, and supersede all prior oral or written franchises and understandings.

SECTION 14.

PUBLICATION EFFECTIVE DATE; ACCEPTANCE AND EXHIBITS

1. **Publication.** This Franchise shall be published in accordance with applicable local and Minnesota law.

2. **Acceptance.**

a. Grantee shall accept this Franchise within sixty (60) days of its enactment by the City Council, unless the time for acceptance is extended by the City. Such acceptance by the Grantee shall be deemed the grant of this Franchise for all purposes provided; however, this Franchise shall not be effective until all City ordinance adoption procedures are complied with and all applicable timelines have run for the adoption of a City ordinance. In the event acceptance does not take place, or should all ordinance adoption procedures and timelines not be completed, this Franchise and any and all rights granted hereunder to the Grantee shall be null and void.

b. Upon acceptance of this Franchise, the Grantee and the City shall be bound by all the terms and conditions contained herein. The Grantee agrees that this Franchise is not inconsistent with Applicable Law or regulations at the time it is executed.

- c. Grantee shall accept this Franchise in the following manner:
 - i. This Franchise will be properly executed and acknowledged by Grantee and delivered to City.
 - ii. With its acceptance, Grantee shall also deliver any grant payments, performance bond and insurance certificates required herein that are due but have not previously been delivered.

3 **Binding Acceptance.** This Franchise shall bind and benefit the parties hereto and their respective authorized heirs, beneficiaries, administrators, executors, receivers, trustees, successors and assigns.

Passed and adopted this _____ day of _____, 2016.

ATTEST:

CITY OF BURNSVILLE, MINNESOTA

By: _____
Its: _____

By: _____
Its: _____

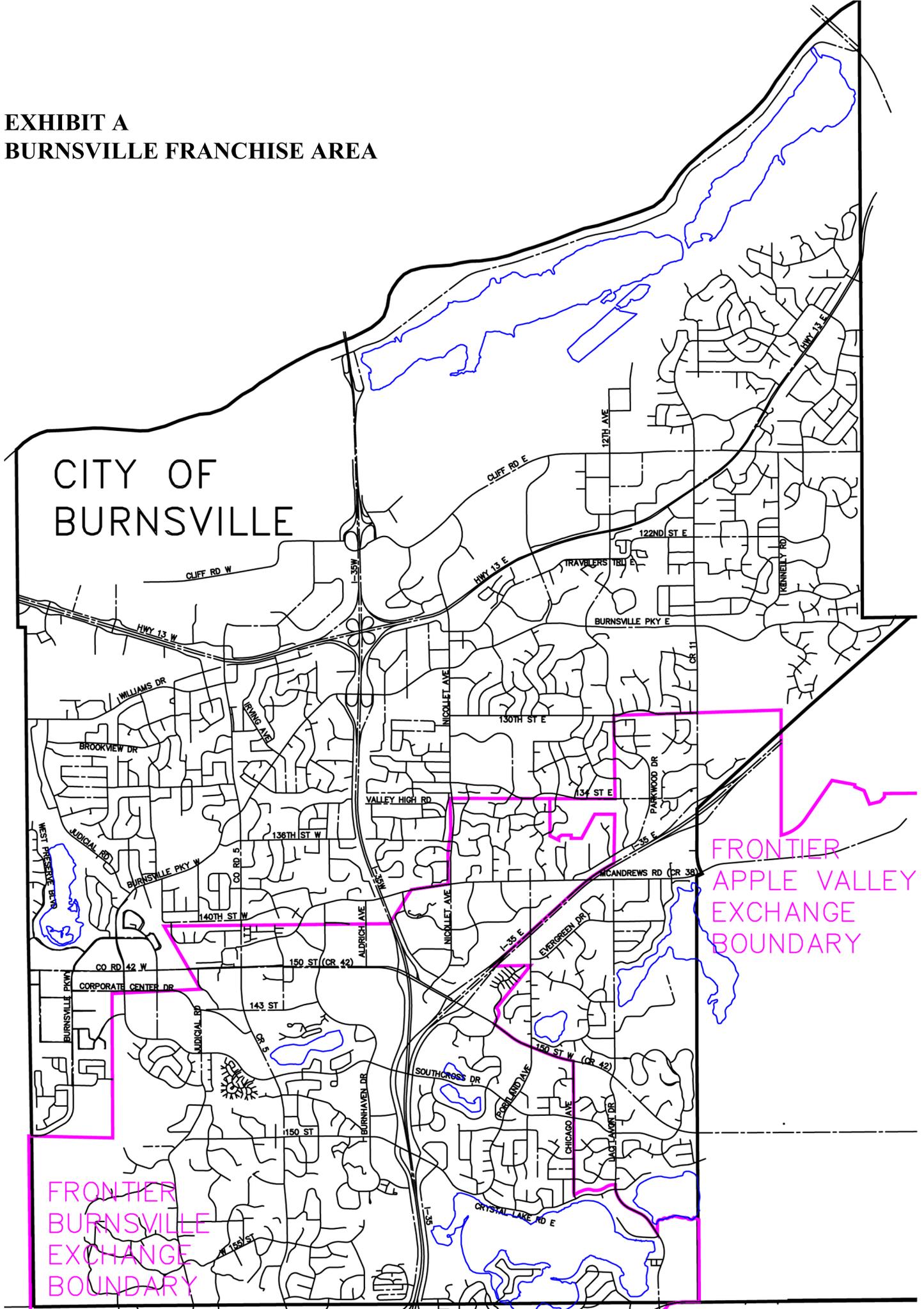
ACCEPTED: This Franchise is accepted and we agree to be bound by its terms and conditions.

FRONTIER COMMUNICATIONS
OF MINNESOTA, LLC

Dated: _____, 2016.

By: _____
Its: _____

**EXHIBIT A
BURNSVILLE FRANCHISE AREA**



CITY OF
BURNSVILLE

FRONTIER
APPLE VALLEY
EXCHANGE
BOUNDARY

FRONTIER
BURNSVILLE
EXCHANGE
BOUNDARY

EXHIBIT B
COMPLIMENTARY SERVICE TO DESIGNATED BUILDINGS

Under Section 7 of this Franchise, Grantee shall provide and maintain, free of charge, Complimentary Service to the institutions listed below and such other government institutions as the City identifies within the Franchise Area.

INSTITUTION	ADDRESS
Burnsville City Hall	100 Civic Center Parkway
Maintenance Facility	13713 Frontier Court
Echo Park Elementary School (District 196)	14100 County Road 11
*Fire Station #1	911 N 140th Street
Dakota County Library/ Dakota County License	1101 W County Road 42
Alimagnet Park	1200 Alimagnet Parkway
Lac Lavon Park	15501 Lac Lavon Drive
Crystal Beach	1101 Crystal Lake Road East

*Parties agree that Fire Station #1 shall be provided a subscriber network connection and Drop upon becoming a Qualified Living Unit, or on or before the fourth anniversary of the Effective Date, whichever occurs first.