

## Executive summary

**Title:** Second reading of an ordinance granting a cable television franchise to Comcast of Minnesota, LLC

**Recommended action:** Motion to approve second reading and Adopt ordinance granting a cable television franchise to Comcast of Minnesota, LLC and approve the summary ordinance for publication.

**Policy consideration:** Does the council wish to adopt the ordinance granting a 10-year cable television franchise to Comcast of Minnesota, LLC?

**Summary:** The city and Comcast have reached agreement on a new franchise to replace the city's current franchise agreement with Comcast, pending council approval. The city council approved first reading of the ordinance on April 5.

**Present considerations:** Below are the highlights of the proposed 10-year franchise agreement:

- *Franchise fee (Sec. 16.1):* The city will continue to receive quarterly payments of 5% of grantee's quarterly gross revenues from the provision of cable services in the city.
- *PEG fee (Sec. 7.12):* The city will receive quarterly PEG fees of 2% of the grantee's quarterly gross revenues, to be used by the city to fund PEG expenses. This differs from the current franchise, which provided defined payments to the city at three intervals throughout the franchise.
- *Free cable service to buildings (Sec. 6.5):* Basic cable service is provided free of charge for schools and city buildings shown in Exhibit A. If laws change to allow the grantee to charge the city for complimentary services, written notice by the grantee is required and the city can suspend certain services before invoicing starts. (See FCC 621 Order update)
- *HD PEG channels (Sec. 7.2):* The proposed franchise allows for the addition of two HD (high definition) PEG (public-education-government) channels in exchange for giving up two SD (standard definition) PEG channels.
- *Customer service (Sec. 14):* The proposed franchise includes extensive customer service policies and requirements.

**Financial or budget considerations:** The final franchise agreement determines the franchise fee based on a percentage of gross revenues from cable service, and also includes capital funding for public-educational-government (PEG) channels, to be received by the city over the new 10-year franchise term.

**Strategic priority consideration:** St. Louis Park is committed to creating opportunities to build social capital through community engagement.

**Supporting documents:** Ordinance; Summary ordinance for publication

**Prepared by:** Jacque Smith, communications and marketing manager

**Reviewed by:** Clint Pires, chief information officer

**Approved by:** Tom Harmening, city manager

## **Ordinance No. 21- \_\_\_\_\_**

### **An ordinance renewing the grant of a franchise to Comcast of Minnesota, LLC to operate and maintain a cable system in the City of St. Louis Park, Minnesota; setting forth conditions accompanying the grant of a franchise; providing for city regulation and administration of the cable system; terminating the prior franchise**

Whereas, the City of St. Louis Park, Minnesota (“City”), pursuant to applicable federal and state law, is authorized to grant one (1) or more nonexclusive cable television franchises to construct, operate, maintain and reconstruct cable television systems within the City limits.

Whereas, Comcast of Minnesota, LLC (“Grantee”) has operated a Cable System in the City, under a cable television franchise granted pursuant to a Cable Television Franchise Ordinance approved on or about February 3, 2006.

Whereas, negotiations between Grantee and the City have been completed and the franchise renewal process followed in accordance with Minnesota Statutes Chapter 238 and the Cable Act (47 U.S.C. §546).

Whereas, the City has determined that it is in the best interest of the City and its residents to renew the cable television franchise with Grantee.

Whereas, the Franchise granted to Grantee by the City is nonexclusive and complies with existing applicable Minnesota Statutes, federal laws and regulations.

**The City of St. Louis Park does ordain** that a franchise is hereby granted to Comcast of Minnesota, LLC to operate and maintain a Cable System in the City upon the following terms and conditions:

#### **SECTION 1 Definitions**

For the purpose of this Franchise, the following, terms, phrases, words, derivations and their derivations shall have the meanings 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 and words in the singular number include the plural number. The word “shall” is always mandatory and not merely directory. The word “may” is directory and discretionary and not mandatory.

1.1 “Affiliate” means any Person controlling, controlled by or under common control of Grantee.

1.2 “Applicable Law(s)” 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.

1.3 “Basic Cable Service” means any service tier which includes the lawful retransmission of local television broadcast, as set forth in Applicable Law, currently 47 U.S.C. § 522(3).

1.4 “Cable Act” means the Cable Communications Policy Act of 1984, 47 U.S.C. §§ 521 et seq., as amended by the Cable Television Consumer Protection and Competition Act of 1992, as further amended by the Telecommunications Act of 1996, as further amended from time to time.

1.5 “Cable Service” means (a) the one-way transmission to Subscribers of (i) Video Programming or (ii) other programming service, and b) Subscriber interaction, if any, which is required for the selection or use of such Video Programming or other programming service, as set forth in Applicable Law, currently 47 U.S.C. § 522(6). For the purposes of this definition, “other programming service” means information that a cable operator makes available to all Subscribers generally.

1.6 “Cable System” or “System” means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes Video Programming and which is provided to multiple Subscribers within a community, but such term does not include:

- (a) a facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;
- (b) a facility that serves Subscribers without using any Right-of-Ways;
- (c) a facility of a common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. § 201 et seq., except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of Video Programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services;
- (d) an open video system that complies with 47 U.S.C. § 573; or
- (e) any facilities of any electric utility used solely for operating its electric utility system.

Unless otherwise specified, it shall in this document refer to the Cable System constructed and operated in the City under this Franchise.

1.7 “Channel” means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel as defined by the FCC by regulation, as set forth in Applicable Law, currently 47 U.S.C. § 522(4).

1.8 “City” means the City of St. Louis Park, a municipal corporation in the State of Minnesota, acting by and through its City Council, or its lawfully appointed designee.

- 1.9 “City Code” means the Municipal Code of the City of St. Louis Park, Minnesota, as may be amended from time to time.
- 1.10 “Converter” means an electronic device, including Digital Transport Adapters, which converts signals to a frequency not susceptible to interference within the television receiver of a Subscriber, and by an appropriate Channel selector also permits a Subscriber to view all Cable Service signals.
- 1.11 “City Council” means the governing body of the City of St. Louis Park, Minnesota.
- 1.12 “Day” means a calendar day, unless otherwise specified.
- 1.13 “Drop” means the cable that connects the Subscriber terminal to the nearest feeder cable of the cable.
- 1.14 “Effective Date” means May 14, 2021.
- 1.15 “FCC” means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.
- 1.16 “Franchise” means the right granted by this Franchise Ordinance and the regulatory and contractual relationship established hereby.
- 1.17 “Franchise Area” means the entire geographic area within the City as it is now constituted or may in the future be constituted.
- 1.18 “Franchise Fee” means the fee assessed by the City to Grantee, in consideration of Grantee’s right to operate the Cable System within the City’s Right-of-Ways, determined in amount as a percentage of Grantee’s Gross Revenues and limited to 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).
- 1.19 “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”).
- 1.20 “Gross Revenues” means and shall be construed broadly to include all revenues derived directly or indirectly by Grantee and/or an Affiliated entity that is the cable operator of the Cable System, from the operation of Grantee’s Cable System to provide Cable Services within the City. Gross Revenues include, by way of illustration and not limitation:
- (a) monthly fees for Cable Services, regardless of whether such Cable Services are provided to residential or commercial customers, including revenues derived from the provision of all Cable Services (including but not limited to pay or premium Cable Services, pay-per-view, pay-per-event, and video-on-demand Cable Services);
  - (b) fees paid to Grantee for Channels designated for commercial/leased access use and shall be allocated on a pro rata basis using total Cable Service Subscribers within the City;

- (c) Converter, digital video recorder, remote control, and other Cable Service equipment rentals, leases, or sales;
- (d) installation, disconnection, reconnection, change-in service, “snow-bird” fees;
- (e) Advertising Revenues as defined herein;
- (f) late fees, convenience fees, and administrative fees;
- (g) other service fees such as HD fees, convenience fees, broadcast fees, regional sports fees, home tech support fees, bill payment fees for in-person or phone payments, additional outlet fees, and related charges relating to the provisions of Cable Service;
- (h) revenues from program guides and electronic guides;
- (i) Franchise Fees;
- (j) FCC regulatory fees;
- (k) except as provided in subsection (ii) below, any fee, tax or other charge assessed against Grantee by municipality, which Grantee chooses to pass through and collect from its Subscribers; and
- (l) commissions from home shopping channels and other Cable Service revenue sharing arrangements, which shall be allocated on a pro rata basis using total Cable Service Subscribers within the City.
  - (i) “Advertising Revenues” shall mean revenues derived from sales of advertising that are made available to Grantee’s Cable System Subscribers within the City and shall be allocated on a pro rata basis using total Cable Service Subscribers reached by the advertising. Additionally, Grantee agrees that Gross Revenues subject to Franchise Fees shall include all commissions, representative fees, Affiliated entity fees, or rebates paid to National Cable Communications and Comcast Spotlight or their successors associated with sales of advertising on the Cable System within the City allocated according to this paragraph using total Cable Service Subscribers reached by the advertising.
  - (ii) “Gross Revenues” shall not include:
    - 1. actual bad debt write-offs, except any portion which is subsequently collected, which shall be allocated on a *pro rata* basis using Cable Services revenue as a percentage of total Subscriber revenues within the City;
    - 2. Public, Education and Government (PEG) Fees; and
    - 3. unaffiliated third-party advertising sales agency fees which are reflected as a deduction from revenues.

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). 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 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 foregoing, 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.

1.21 "Normal Business Hours" means those hours during which most similar businesses in the City are open to serve customers. In all cases, "Normal Business Hours" must include some evening hours, at least one (1) night per week and/or some weekend hours.

1.22 "Normal Operating Conditions" means those Service conditions which are within the control of Grantee. Those conditions which are not within the control of Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System.

1.23 "PEG" means public, education and government.

1.24 “Person” means any natural person and all domestic and foreign corporations, closely-held corporations, associations, syndicates, joint stock corporations, partnerships of every kind, clubs, businesses, common law trusts, societies and/or any other legal entity.

1.25 “Public Right-of-Way or Right-of-Way” means the area on, below, or above a public roadway, alleyway, highway, street, cartway, bicycle lane or public sidewalk in which the City has an interest, including other dedicated rights-of-way for travel purposes and utility easements of the City. A Right-of-Way does not include the airwaves above a Right-of-Way with regard to cellular or other nonwire telecommunications or broadcast service.

1.26 “Subscriber” means a Person who lawfully receives Cable Service.

1.27 “Video Programming” means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

1.28 “Wireline MVPD” means any entity, including the City, that utilizes the Right-of-Ways to install cable or fiber and is engaged in the business of making available for purchase, by Subscribers, multiple Channels of Video Programming in the City, which could also include the City. For purposes of this Franchise, the term “Wireline MVPD” shall not be limited to entities defined by the FCC as “multichannel video programming distributors” and shall include entities that provide multiple Channels of Video Programming via open video systems, as defined by the FCC, but it is the intent of the Grantee and the City that the term Wireline MVPD shall not include small cell providers, unless the City has the legal authority under Applicable Law to regulate or to impose cable franchise obligations upon such small cell providers.

## SECTION 2 Franchise

2.1 **Grant of Franchise.** The City hereby authorizes Grantee to occupy or use the City’s Right-of-Ways subject to: 1) the provisions of this non-exclusive Franchise to provide Cable Service within the City; and 2) all applicable provisions of the City Code. Unless this Franchise has expired pursuant to Section 2.8 herein or this Franchise is otherwise terminated pursuant to Section 11.2 herein, said Franchise shall constitute both a right and an obligation to provide Cable Services as required by the provisions of this Franchise. Nothing in this Franchise shall be construed to prohibit Grantee from: (1) providing services other than Cable Services to the extent not prohibited by Applicable Law; or (2) challenging any exercise of the City’s legislative or regulatory authority in an appropriate forum. The City hereby reserves all of its rights to regulate such other services to the extent not prohibited by Applicable Law and no provision herein shall be construed to limit or give up any right to regulate.

2.2 **Reservation of Authority.** The Grantee specifically agrees to comply with the lawful provisions of the City Code and applicable regulations of the City. Subject to the police power exception below, in the event of a conflict between: A) the lawful provisions of the City Code or applicable regulations of the City; and B) this Franchise, the express provisions of this Franchise shall govern. Subject to express federal and state preemption, the material terms and conditions contained in this Franchise may not be unilaterally altered by the City through subsequent amendments to the City Code, ordinances or any regulation of City, except in the lawful exercise of City’s police power. Grantee acknowledges that the City may modify its regulatory policies by lawful exercise of the City’s police powers throughout the term of this Franchise. Grantee agrees

to comply with such lawful modifications to the City Code; however, Grantee reserves all rights it may have to challenge such modifications to the City Code whether arising in contract or at law. The City reserves all of its rights and defenses to such challenges whether arising in contract or at law. Nothing in this Franchise shall (A) abrogate the right of the City to perform any public works or public improvements of any description, (B) be construed as a waiver of any codes or ordinances of general applicability promulgated by the City, or (C) be construed as a waiver or release of the rights of the City in and to the Right-of-Ways.

**2.3 Franchise Term.** The term of this Franchise shall be ten (10) years from the Effective Date, unless renewed, amended or extended by mutual written consent in accordance with Section 17.7 or terminated sooner in accordance with this Franchise.

**2.4 Franchise Area.** This Franchise is granted for the Franchise Area defined herein. Grantee shall extend its Cable System to provide Service to any residential unit in the City in accordance with Section 6.8 herein.

**2.5 Franchise Nonexclusive.** The Franchise granted herein shall be nonexclusive. The City specifically reserves the right to grant, at any time, such additional franchises for a Cable System as it deems appropriate provided, however, such additional grants shall not operate to materially modify, revoke, or terminate any rights previously granted to Grantee other than as described in Section 17.18. The grant of any additional franchise shall not of itself be deemed to constitute a modification, revocation, or termination of rights previously granted to Grantee. Any additional cable franchise grants shall comply with Minnesota Statutes § 238.08 and any other applicable federal level playing field requirements.

**2.6 Periodic Public Review of Franchise.** The City may conduct a public review of the Franchise. The purpose of any such review shall be to ensure, with the benefit of full opportunity for public comment that the Grantee continues to effectively serve the public in accordance with Applicable Law, and considering any new cable technology, Grantee's performance with the requirements of this Franchise, local regulatory environment, community needs and interests, and other such factors. So long as Grantee receives reasonable notice, Grantee shall cooperate in good faith. The review shall not operate to modify or change any provision of this Franchise without mutual written consent in accordance with Section 17.7 of this Franchise. The City and Grantee shall each be responsible for their own costs regarding the conduct of, or cooperation with, any such periodic review.

**2.7 Transfer of Ownership.**

(a) A sale or transfer of this Franchise, including a sale or transfer by means of a "fundamental corporate change," as defined by Minnesota Statutes §238.083 Subd. 1, or the sale or transfer of stock in Grantee so as to create a new "controlling interest," as defined in Minnesota Statutes §238.083 Subd. 6, in the Cable System, shall require the written approval of the City. Grantee shall submit a written request to the City for approval, provided, however, that said approval shall not be required where Grantee grants a security interest in its Franchise and assets to secure an indebtedness. The written approval of the City shall not be required under this section for internal corporate reorganizations involving Affiliates or pledges of the Franchise as collateral or security for any loan or other debt instrument.



(b) City shall approve or deny in writing the sale or transfer request. City shall set forth in writing with particularity its reason(s) for denying approval. City shall not unreasonably withhold its approval.

(c) Any sale or transfer of stock in Grantee so as to create a new controlling interest in the System shall be subject to the requirements of this Section 2.7. The term “controlling interest” as used herein is not limited to majority stock ownership but includes actual working control in whatever manner exercised. In no event shall a transfer or assignment of ownership or control be approved without the transferee becoming a signatory to this Franchise and assuming all rights and obligations thereunder, and assuming all other rights and obligations of the transferor to the City.

(d) In accordance with Minnesota Statutes § 238.084, Subd. 1(y), the City shall have the right to purchase the System in the event the Franchise or System is proposed to be transferred or sold on the same terms and conditions as the offer pursuant to which transfer notice was provided pursuant to this section. The City shall have thirty (30) Days from receipt of an application for consent under this Section 2.7 in which to give notice of its intention to consider exercising such right.

(e) If the City has issued a written notice of franchise violation in accordance with the terms of this Franchise, the transfer may be conditioned upon the transferee agreeing to a mutually acceptable remediation plan. The approval of any transfer of ownership pursuant to this section shall not be deemed to waive any rights of the City to subsequently enforce noncompliance issues relating to this Franchise even if such issues predated the approval, whether known or unknown to the City.

2.8 **Expiration.** Upon expiration of the Franchise, the City shall have the right at its own election and subject to Grantee’s rights under Section 626 of the Cable Act to:

(a) extend the Franchise, though nothing in this provision shall be construed to require such extension;

(b) renew the Franchise, in accordance with Applicable Laws;

(c) invite additional franchise applications or proposals;

(d) terminate the Franchise subject to any rights Grantee has under Section 626 of the Cable Act; or

(e) take such other action as the City deems appropriate.

2.9 **Right to Require Removal of Property.** At the expiration of the term for which this Franchise is granted, provided no renewal is granted, or upon its forfeiture or revocation as provided for herein, the City shall have the right to require Grantee to remove at Grantee’s own expense all or any part of the Cable System from all Right-of-Ways and public ways within the Franchise Area within a reasonable time. If Grantee fails to do so, the City may perform the work and collect the cost thereof from Grantee. However, Grantee shall have no obligation to remove the Cable System where it utilizes the System to provide other non-Cable Services and has any other authority under Applicable Law to maintain facilitates in the Public Rights-of-

Way, or where Grantee is able to find a purchaser of the Cable System who holds such authorization.

**2.10 Continuity of Service Mandatory.** It shall be the right of all Subscribers to receive Cable Service in accordance with the terms of this Franchise and Applicable Law. In the event that Grantee elects to overbuild, rebuild, modify, or sell the System, or the City revokes or fails to renew the Franchise, Grantee shall make its best effort to ensure that all Subscribers receive continuous uninterrupted service, regardless of the circumstances, while the Franchise remains effective. In the event of expiration, revocation/termination, purchase, lease-purchase, condemnation, acquisition, taking over or holding of plant and equipment, sale, lease, or other transfer to any other Person, including any other grantee of a cable franchise, the current Grantee shall cooperate fully to operate the System in accordance with the terms and conditions of this Franchise for a temporary period sufficient in length to maintain continuity of service to all Subscribers.

### **SECTION 3 Operation in Streets and Rights-of-Way**

#### **3.1 Use of Right-of-Ways.**

(a) Grantee may, subject to the terms of this Franchise and the City Code, erect, install, construct, repair, replace, reconstruct and retain in, on, over, under, upon, across and along the Right-of-Ways within the City such lines, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of a Cable System within the City. Without limiting the foregoing, Grantee expressly agrees that it will construct, operate and maintain its Cable System in compliance with, and subject to, the requirements of the City Code, including by way of example and not limitation, those requirements governing the placement of Grantee's Cable System; and with other applicable City Codes, and will obtain, pay for and maintain all permits and bonds required by the City Code in addition to those required in this Franchise.

(b) All wires, conduits, cable and other property and facilities of Grantee shall be so located, constructed, installed and maintained as not to endanger or unnecessarily interfere with the usual and customary trade, traffic and travel upon, or other use of the Right-of-Ways of City. Grantee shall keep and maintain all of its property in good condition, order and repair so that the same shall not menace or endanger the life or property of any Person. Consistent with the mapping requirements in Section 4.6 of this Franchise, Grantee shall keep accurate maps and records of all of its wires, conduits, cables and other property and facilities located, constructed and maintained in the City.

(c) All wires, conduits, cables and other property and facilities of Grantee, shall be constructed and installed in an orderly and professional manner in accordance with all applicable requirements of the City Code and Applicable Law. All wires, conduits and cables shall be installed, where possible, parallel with electric and telephone lines. Multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering considerations.

(d) 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.

**3.2 Construction or Alteration.** Grantee shall in all cases comply with applicable sections of the City Code, City resolutions and City regulations regarding the acquisition of permits and/or such other items as may be reasonably required in order to construct, alter or maintain the Cable System. Grantee shall, upon request, provide information to the City regarding its progress in completing or altering the Cable System.

**3.3 Non-Interference.** Grantee shall exert its best efforts to construct and maintain a Cable System so as not to interfere with other uses of Right-of-Ways. Grantee shall, where possible in the case of above ground lines, make use of existing poles and other facilities available to Grantee. When residents receiving underground service or who will be receiving underground service will be affected by proposed construction or alteration, Grantee shall provide such notice as set forth in the permit or in City Code of the same to such affected residents.

**3.4 Consistency with Designated Use.** Notwithstanding the above grant to use Right-of-Ways, no Right-of-Way shall be used by Grantee if the City, in its sole opinion, determines that such use is inconsistent with the terms, conditions or provisions by which such Right-of-Way was created or dedicated, or presently used under Applicable Laws.

**3.5 Undergrounding.** Grantee shall in all cases comply with applicable sections of the City Code, City resolutions and City regulations when installing facilities underground.

(a) Grantee shall place underground all of its transmission lines which are located or are to be located above or within the Right-of-Ways of the City in the following cases:

(i) all other existing utilities are required to be placed underground by statute, resolution, policy or other Applicable Law;

(ii) Grantee is unable to get pole clearance;

(iii) underground easements are obtained from developers of new residential areas; or

(iv) utilities are overhead but residents prefer underground (undergrounding provided at cost paid by benefitted residents).

(b) If an ordinance is passed which involves placing underground certain utilities including Grantee's cable plant which is then located overhead, Grantee shall participate in such underground project and shall remove poles, cables and overhead wires if requested to do so and place facilities underground. Nothing herein shall mandate that City provide reimbursement to Grantee for the costs of such relocation and removal. However, if the City makes available funds for the cost of placing facilities underground, nothing herein shall preclude the Grantee from participating in such funding to the extent consistent with the City Code or Applicable Laws. If non-City funds, such as funds from

state or federal grant funding, are made available to place electric or telephone lines underground, nothing herein shall prohibit Grantee from participating in such funding.

(c) Grantee shall use conduit or its functional equivalent to the greatest extent possible for undergrounding, except for Drops from pedestals to Subscribers' homes and for cable on other private property where the owner requests that conduit not be used. Cable and conduit shall be utilized which meets the highest industry standards for electronic performance and resistance to interference or damage from environmental factors. Grantee shall use, in conjunction with other utility companies or providers, common trenches for underground construction wherever available.

### 3.6 **Maintenance and Restoration.**

(a) Restoration. In case of disturbance of any Right-of-Way, public way, paved area or public improvement, Grantee shall, at its own cost and expense and in accordance with the requirements of the City Code restore such Right-of-Way, public way, paved area or public improvement to substantially the same condition as existed before the work involving such disturbance took place. All requirements of this section pertaining to public property shall also apply to the restoration of private easements and other private property. Grantee shall perform all restoration work within a reasonable time and with due regard to seasonal working conditions. If Grantee fails, neglects or refuses to make restorations as required under this section and any applicable City Code provision, then the City may do such work or cause it to be done, and the cost thereof to the City shall be paid by Grantee. If Grantee causes any damage to private property in the process of restoring facilities, Grantee shall repair such damage.

(b) Maintenance. Grantee shall maintain all above ground improvements that it places on City Right-of-Ways pursuant to the City Code and any permit issued by the City. In order to avoid interference with the City's ability to maintain the Right-of-Ways, Grantee shall provide such clearance as is required by the City Code and any permit issued by the City. If Grantee fails to comply with this provision, and by its failure, property is damaged, Grantee shall be responsible for all damages caused thereby.

(c) Disputes. In any dispute over the adequacy of restoration or maintenance relative to this section, final determination shall be the prerogative of the City, Department of Engineering and consistent with the City Code and any permit issued by the City.

3.7 **Work on Private Property.** Grantee, with the consent of property owners, shall have the authority, pursuant to the City Code, to trim trees upon and overhanging Right-of-Ways, alleys, sidewalks, and public ways so as to prevent the branches of such trees from coming in contact with the wires and cables of Grantee, except that at the option of the City, such trimming may be done by it or under its supervision and direction at the reasonable expense of Grantee.

### 3.8 **Relocation.**

(a) Public Property. Grantee shall relocate its System and facilities in accordance with the City Code. In addition, if, during the term of the Franchise, the City or any government entity elects or requires a third party to alter, repair, realign, abandon,

improve, vacate, reroute or change the grade of any Right-of-Way or other public property; or to construct, maintain or repair any public improvement; or to replace, repair install, maintain, or otherwise alter any cable, wire conduit, pipe, line, pole, wire-holding structure, structure, or other facility, including a facility used for the provision of utility or other services or transportation of drainage, sewage or other liquids, for any public purpose, Grantee shall, upon request, except as otherwise hereinafter provided, at its sole expense remove or relocate as necessary its poles, wires, cables, underground conduits, vaults, pedestals, manholes and any other facilities which it has installed. Nothing herein shall mandate that City provide reimbursement to Grantee for the costs of such relocation and removal. However, if the City makes available funds for the cost of placing facilities underground, nothing herein shall preclude the Grantee from participating in such funding to the extent consistent with the City Code or Applicable Laws. If non-City funds, such as funds from state or federal grant funding, are made available to place electric or telephone lines underground, nothing herein shall prohibit Grantee from participating in such funding.

(b) Utilities and Other Franchisees. If, during the term of the Franchise, another entity which holds a franchise or any utility requests Grantee to remove or relocate such facilities to accommodate the construction, maintenance or repair of the requesting party's facilities, or their more efficient use, or to "make ready" the requesting party's facilities for use by others, or because Grantee is using a facility which the requesting party has a right or duty to remove, Grantee shall do so. The companies involved may decide among themselves who is to bear the cost of removal or relocation, pursuant to City Code, and provided that the City shall not be liable for such costs.

(c) Notice to Remove or Relocate. Any Person requesting Grantee to remove or relocate its facilities shall give Grantee no less than forty-five (45) Days' advance written notice advising Grantee of the date or dates removal or relocation is to be undertaken, provided that no advance written notice shall be required in emergencies or in cases where public health and safety or property is endangered.

(d) Failure by Grantee to Remove or Relocate. If Grantee fails, neglects or refuses to remove or relocate its facilities as directed by the City; or in emergencies or where public health and safety or property is endangered, the City may do such work or cause it to be done, and the cost thereof to the City shall be paid by Grantee. If Grantee fails, neglects or refuses to remove or relocate its facilities as directed by another franchisee or utility, that franchisee or utility may do such work or cause it to be done, and if Grantee would have been liable for the cost of performing such work, the cost thereof to the party performing the work or having the work performed shall be paid by Grantee.

(e) Procedure for Removal of Cable. Grantee shall not remove any underground cable or conduit which requires trenching or other opening of the Right-of-Ways along the extension of cable to be removed, except as hereinafter provided. Grantee may remove any underground cable from the Right-of-Ways which has been installed in such a manner that it can be removed without trenching or other opening of the Right-of-Ways along the extension of cable to be removed. Subject to Applicable Law, Grantee shall remove, at its sole cost and expense, any underground cable or conduit by

trenching or opening of the Right-of-Ways along the extension thereof or otherwise which is ordered to be removed by the City based upon a determination, in the sole discretion of the City, that removal is required in order to eliminate or prevent a hazardous condition. In the event this occurs, Grantee shall notify the City and follow the requirements of the City's Department of Engineering and City Code. Underground cable and conduit in the Right-of-Ways which is not removed shall be deemed abandoned and title thereto shall be vested in the City.

(f) **Movement of Buildings.** Grantee shall, upon request by any Person holding a building moving permit, franchise or other approval issued by the City, temporarily remove, raise or lower its wire to permit the movement of buildings. The expense of such removal, raising or lowering shall be paid by the Person requesting same, and Grantee shall be authorized to require such payment in advance. The City shall require all building movers to provide not less than fifteen (15) Days' notice to the Grantee to arrange for such temporary wire changes.

#### **SECTION 4 Removal or Abandonment of System**

**4.1 Removal of Cable System.** In the event that: (1) the use of the Cable System is discontinued for any reason for a continuous period of twelve (12) months; or (2) the Cable System has been installed in a Right-of-Way without complying with the requirements of this Franchise or the City Code, Grantee, at its expense shall, at the demand of the City remove promptly from the Right-of-Ways all of the Cable System other than any which the City may permit to be abandoned in place. In the event of any such removal Grantee shall promptly restore the Right-of-Way to a condition as nearly as possible to its prior condition or other public places in the City from which the System has been removed. However, Grantee shall have no obligation to remove the Cable System where it utilizes the System to provide other non-Cable Services and has any other authority under Applicable Law to maintain facilities in the Right-of-Way, or where Grantee is able to find a purchaser of the Cable System who holds such authorization.

**4.2 Abandonment of Cable System.** In the event of Grantee's abandonment of the Cable System, City shall have the right to require Grantee to comply with the state right-of-way rules, Minnesota Rules, Chapter 7819. The Cable System to be abandoned in place shall be abandoned in the manner prescribed by the City. Grantee may not abandon any portion of the System without having first given three (3) months written notice to the City. Grantee may not abandon any portion of the System without compensating the City for damages resulting from the abandonment.

**4.3 Removal after Abandonment or Termination.** If Grantee has failed to commence removal of System, or such part thereof as was designated by City, within thirty (30) Days after written notice of City's demand for removal consistent with Minnesota Rules, Chapter 7819, is given, or if Grantee has failed to complete such removal within twelve (12) months after written notice of City's demand for removal is given, City shall have the right to apply funds secured by the performance bond, and any pending letter of credit required by Section 10.1 of this Franchise, toward removal and/or declare all right, title, and interest to the Cable System for the City with all rights of ownership including, but not limited to, the right to operate the Cable System or transfer the Cable System to another for operation by it.

**4.4 City Options for Failure to Remove Cable System.** If Grantee has failed to complete such removal within the time given after written notice of the City's demand for removal is given, the City shall have the right to exercise one of the following options:

- (a) Declare all right, title and interest to the System for the City or its designee 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; or
- (b) Declare the System abandoned and cause the System, or such part thereof as the City shall designate, to be removed at no cost to the City. The cost of said removal shall be recoverable from the performance bond, indemnity and penalty section provided for in this Franchise or from Grantee directly.
- (c) Upon termination of service to any Subscriber, Grantee shall promptly remove all facilities and equipment from within the dwelling of a Subscriber who owns such dwelling upon his or her written request, except as provided by Applicable Law. Such Subscribers shall be responsible for any costs incurred by Grantee in removing the facilities and equipment.

**4.5 System Construction and Equipment Standards.** The Cable System shall be installed and maintained in accordance with standard engineering practices and shall conform, when applicable, with the National Electrical Safety Code, the National Electrical Code and the FCC's Rules and Regulations.

**4.6 System Maps and Layout.** In addition to any generally applicable mapping requirements included in the City Code and required of other utilities, Grantee shall maintain complete and accurate system maps, which shall include trunks, distribution lines, and nodes. Such maps shall include up-to-date route maps showing the location of the Cable System adjacent to the Right-of-Ways. Grantee shall make all maps available for review by the appropriate City personnel.

## **SECTION 5 System Design and Capacity**

### **5.1 Availability of Signals and Equipment.**

- (a) The Cable System utilizes a fiber to the fiber node architecture, with fiber optic cable deployed from Grantee's headend to Grantee's fiber nodes, tying into Grantee's coaxial Cable System serving Subscribers. The System shall pass a minimum of 750 MHz (with a minimum passband of between 50 and 750 MHz) and shall be maintained to provide to Subscribers a minimum of at least two hundred (200) or more activated downstream video Channels, or such comparable video viewing capability as is provided in light of developing technologies and video distribution practices in the future.
- (b) The entire System shall be technically capable of transmitting industry-standard digital television signals in a manner and quality consistent with applicable FCC regulations.
- (c) Grantee agrees to maintain the Cable System in a manner consistent with, or in excess of the specifications in Section 5.1 (a) and (b) throughout the term of the

Franchise with sufficient capability and technical quality to enable the implementation and performance of all requirements of this Franchise, including the exhibits hereto, and in a manner which meets or exceeds FCC technical quality standards at 47 C.F.R. § 76 Subpart K, regardless of the particular format in which a signal is transmitted.

**5.2 Equal and Uniform Service.** Grantee shall provide access to equal and uniform Cable Service throughout the City consistent with Applicable Law.

**5.3 System Specifications.**

(a) **System Maintenance.** In all construction and service provision activities, Grantee shall meet or exceed the construction, technical performance, extension and service requirements set forth in this Franchise.

(b) **Emergency Alert Capability.** At all times during the term of this Franchise, Grantee shall provide and maintain an Emergency Alert System (“EAS”) consistent with Applicable Law and regulations including 47 C.F.R., Part 11, and any Minnesota State Emergency Alert System requirements. The City may identify authorized emergency officials for activating the EAS insofar as the City’s process is consistent with the Minnesota State Emergency Statewide Plan (“EAS Plan”). The City may also develop a local plan containing methods of EAS message distribution, insofar as the local plan is consistent with Applicable Laws and the EAS Plan.

(c) **Standby Power.** Grantee shall provide standby power generating capacity at the Cable System control center and at all hubs. Grantee shall maintain standby power system supplies, rated for at least two (2) hours’ duration, throughout the trunk and distribution networks. In addition, Grantee shall have in place throughout the Franchise term a plan, and all resources necessary for implementation of the plan, for dealing with outages of more than two (2) hours.

(d) **Technical Standards.** The technical standards used in the operation of the Cable System shall comply, at minimum, with the technical standards promulgated by the FCC relating to Cable Systems pursuant to Title 47, Section 76, Subpart K of the Code of Federal Regulations, as may be amended or modified from time to time, which regulations are expressly incorporated herein by reference. The Cable System shall be installed and maintained in accordance with standard engineering practices and shall conform with the National Electrical Safety Code and all other Applicable Laws governing the construction of the Cable System.

**5.4 Performance Testing.** Grantee shall perform all system tests at the intervals required by the FCC, and all other tests reasonably necessary to determine compliance with technical standards required by this Franchise. These tests may include, at a minimum:

- (a) Initial proof of performance for any construction;
- (b) Semi-annual compliance tests;
- (c) Tests in response to Subscriber complaints; and



(d) Tests reasonably requested by the City to demonstrate Franchise compliance.

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

#### 5.5 **Special Testing.**

(a) Throughout the term of this Franchise, City shall have the right to inspect all construction or installation work performed pursuant to the provisions of the Franchise. In addition, City may require special testing of a location or locations within the System if there is a particular matter of controversy or unresolved complaints regarding such construction or installation work or pertaining to such location(s). Demand for such special tests may be made on the basis of complaints received or other evidence indicating an unresolved controversy or noncompliance. Such tests shall be limited to the particular matter in controversy or unresolved complaints. City shall endeavor to so arrange its request for such special testing so as to minimize hardship or inconvenience to Grantee or to the Subscribers impacted by such testing.

(b) Before ordering such tests, Grantee shall be afforded thirty (30) Days following receipt of written notice to investigate and, if necessary, correct problems or complaints upon which tests were ordered. City shall meet with Grantee prior to requiring special tests to discuss the need for such and, if possible, visually inspect those locations which are the focus of concern. If, after such meetings and inspections, City wishes to commence special tests and the thirty (30) Days have elapsed without correction of the matter in controversy or unresolved complaints, the tests shall be conducted at Grantee's expense by Grantee's qualified engineer. The City shall have a right to participate in such testing by having an engineer of City's choosing, and at City's expense, observe and monitor said testing.

### **SECTION 6 Programming and Services**

6.1 **Categories of Programming Service.** Grantee shall provide Video programming services 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 Programming (to the extent required by the Franchise)

Movies

Leased Access, as required by Applicable Law

**6.2 Changes in Programming Services.** Grantee shall provide at least thirty (30) Days' prior written notice to Subscribers and to the City of Grantee's request to effectively delete any broad category of programming or any Channel within its control, including all proposed changes in bandwidth or Channel allocation and any assignments including any new equipment requirements that may occur as a result of these changes.

**6.3 Parental Control Device or Capability.** Upon request by any Subscriber, Grantee shall make available, at no additional cost to any Subscriber, a parental control or lockout device or functionality that will enable the Subscriber to block all access to any and all Channels without affecting those not blocked. Grantee shall inform Subscribers of the availability of the lockout device or functionality at the time of original subscription and annually thereafter.

**6.4 FCC Reports.** The results of any tests required to be filed by Grantee with the FCC shall also be copied to City within ten (10) Days of the conduct of the date of the tests.

**6.5 Free Cable Service to Public Buildings.**

(a) The parties acknowledge that as of the Effective Date of this Franchise, Grantee continues to provide, free of charge, Basic Cable Service (including the PEG Channels) to certain schools, libraries and public institutions within the Franchise Area as set forth in Exhibit A ("Complimentary Services"). In the event Grantee elects, to the extent permitted by Applicable Laws, to invoice the City for Complimentary Services, the Grantee agrees that it will do so only after providing City with one hundred twenty (120) Days' prior written notice. Grantee agrees not to unfairly or unreasonably discriminate against the City with respect to other Minnesota served local franchising authorities, with respect to the costs to be imposed for Complimentary Services.

(b) The City shall have right to discontinue receipt of all or a portion of the Complimentary Service provided by Grantee in the event Grantee elects to impose a charge against the City for the Complimentary Service as set forth in the preceding paragraph.

**6.6 Limitation on Free Service.** Notwithstanding anything to the contrary set forth in this Section, Grantee shall not be required to provide Complimentary Service to such buildings unless it is technically feasible. Outlets and maintenance of said Complimentary Service shall be provided free of fees and charges.

**6.7 Annexation.** Unless otherwise provided by Applicable Law, including the City Code, upon the annexation of any additional land area by City, the annexed area shall thereafter be subject to all the terms of this Franchise upon sixty (60) Days written notification to Grantee of the annexation by City. Unless otherwise required by Applicable Laws, nothing herein shall require the Grantee to expand its Cable System to serve, or to offer Cable Service to any area annexed by the City if such area is then served by another Wireline MVPD franchise to provide multichannel video programming.

**6.8 Line Extension.**

(a) Grantee shall construct and operate its Cable System so as to provide Cable Service within the Franchise Area where there exists a density equivalent of seven (7)

dwelling units per one-quarter (1/4) mile of feeder cable as measured from the nearest active plant of the Cable System if the extension is to be constructed using aerial plant, and nine (9) dwelling units per one-quarter (1/4) mile of feeder cable as measured from the nearest active plant if the extension is to be constructed using underground plant. The City, for its part, shall endeavor to exercise reasonable efforts to require developers and utility companies to provide the Grantee with at least fifteen (15) Days advance notice of an available open trench for the placement of necessary cable.

(b) Any residential unit located within one hundred twenty-five (125) feet from the nearest point of access on the Right-of-Way from which the Cable System is designed to serve the site shall be connected to the Cable System at no charge other than the standard installation charge. Grantee shall, within fifteen (15) Days request by any potential Subscriber residing in City beyond the one hundred twenty-five (125) foot limit, provide a quote identifying the costs associated with extending service to such Subscriber. Grantee shall perform the extension of service as soon as reasonably possible and in no event longer than thirty (30) Days, provided that the Subscriber shall pay the net additional Drop costs, unless the Grantee agrees to waive said costs. To the extent consistent with Applicable Laws, Grantee agrees that it shall impose installation costs for non-standard installations in a uniform and nondiscriminatory manner throughout the City.

**6.9 Nonvoice Return Capability.** Grantee is required to use cable and associated electronics having the technical capacity for nonvoice return communications.

## **SECTION 7 Local Peg Programming**

### **7.1 Number of PEG Channels.**

(a) Grantee shall continue to make available a minimum of five (5) PEG Channels in Standard Definition ("SD") and one (1) PEG Channel in High Definition ("HD"). Throughout the term of this Franchise Grantee shall provide the PEG Channels on the Basic Cable Service tier or such other most highly penetrated tier of Cable Service as may be offered by Grantee in accordance with Applicable Law.

(b) For purposes of this Franchise, HD signal refers to a television signal delivering picture resolution of either 720p or greater.

### **7.2 HD PEG Channels.**

(a) Throughout the term of this Franchise, Grantee shall continue to make one (1) of the PEG Channels available in both SD and HD format.

(b) Within ninety (90) Days of the Effective Date of this Franchise, Grantee shall make a second PEG Channel available in both SD and HD format.

(c) At the time a second HD PEG Channel is provided, the City will give up one (1) SD PEG Channel, so that the City will then have four (4) SD PEG Channels, and two (2) HD PEG Channels. The City at its sole discretion will choose the SD PEG Channel that is

given back to Grantee, and the PEG Channel that becomes capable of SD/HD programming.

(d) Within one hundred eighty (180) Days of the Effective Date of this Franchise, the City will have the option to give back, upon ninety (90) Days written notice to Grantee, a second SD PEG Channel and Grantee shall provide SD/HD capability to one of the remaining SD PEG Channels, so that the City will then have three (3) SD PEG Channels, and three (3) HD PEG Channels. The City shall determine, in the City's sole discretion, which PEG Channel to give back, and which PEG Channel shall then be capable of SD/HD programming.

(e) Nothing herein shall diminish any rights of the City to secure additional PEG Channels pursuant to Minnesota Statutes Section 238.084, which is expressly incorporated herein by reference.

(f) At such time as eighty percent (80%) of the Grantee's Basic Service tier Channels are provided exclusively in HD format, the City may request, and the Grantee shall provide upon one hundred twenty (120) Days' notice, that the remaining SD PEG Channels be converted to HD Channels, subject to the other requirements of this section. In the event that all PEG Channels are made available in HD, the City's maximum number of PEG Channels shall be three (3). For purposes of calculating the eighty percent (80%) threshold, "on demand" programming and similar programming is not considered a Channel, even if available to Basic Cable Service Subscribers.

(g) The City acknowledges that receipt of an HD format PEG Channel may require Subscribers to buy or lease special equipment or pay additional HD charges applicable to all HD services.

(h) Any costs of end-user equipment associated with the delivery of PEG Channels in HD format beyond the Demarcation Point shall be borne by the City 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.

**7.3 Control of PEG Channels.** The control and administration of the PEG 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.

**7.4 Transmission of PEG Channels.** PEG 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.

**7.5 PEG Channel Locations.**

(a) PEG Channels shall be carried on the Basic Cable Service tier as set forth in Section 7.1 herein. Nothing herein precludes the Grantee from charging Subscribers for equipment needed for Basic Cable Service. Grantee shall initially continue cablecasting PEG access programming on the Cable System on the same Channel designations as such programming is cablecast within the City as of the Effective Date. In no event shall any PEG Channel relocations be made prior to ninety (90) Days written notice to the City by Grantee, except for circumstances beyond Grantee's reasonable control. If relocated, the PEG Channels will be located on consecutive Channel numbers in the SD Channel lineups as applicable and within reasonable proximity to other broadcast or news Channels, excluding pay-per-view programming offered by Grantee in the City. For new HD PEG Channels that are provided pursuant to this Franchise, Grantee shall make reasonable commercial efforts to assign the PEG Channels a number near the other HD local broadcast stations if such Channel positions are not already taken, or if that is not possible, near HD news/public affairs programming Channels if such Channel positions are not already taken, or if not possible, as reasonably close as available Channel numbering will allow. Currently the HD PEG Channels are located, or expected to be located, on 799, 798 and 853.

(b) Grantee agrees not to encrypt the PEG Channels differently than other commercial Channels available on the Cable System.

(c) Grantee shall make reasonable efforts to minimize Channel movements for PEG Channels and shall make reasonable efforts to locate both SD and HD PEG Channels in its lineup in a manner that is easily accessible to Subscribers. In the event an SD PEG Channel is moved, Grantee shall provide a rebranding reimbursement grant of One Thousand Five Hundred and No/100 Dollars (\$1,500) per relocated Channel.

**7.6 Navigation to PEG Channels and Electronic Programming Guide.** Grantee agrees that if it utilizes any navigation interfaces under its control on its Cable System for all Channels, the PEG Channels shall be treated in a non-discriminatory fashion consistent with Applicable Laws so that Subscribers will have ready access to PEG Channels. Grantee will maintain the existing ability of the City 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. Grantee will be responsible for providing the designations and instructions necessary for the PEG Channels to appear on the EPG. All costs and operational requirements of the EPG provider shall be the responsibility of the City. City acknowledges that the EPG may not be technically possible for all PEG programming, and that Grantee is not responsible for operations of the EPG provider.

**7.7 Ownership of PEG 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, education or government 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, education, or government 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.

7.8 **PEG Monitoring.** Grantee shall provide the capability, without charge, for the City Hall locations and the ParkTV master control facility listed, to monitor and verify the audio and visual quality of PEG Channels received by Subscribers as well as the existing connections and equipment at the ParkTV master control facility. This will include equipment comparable to that deployed to residential cable Subscribers that will allow the City to verify the accuracy of EPG listings for the PEG Channels consistent with what is currently provided. Grantee shall also maintain one (1) feed to the City Hall office to provide the ability to monitor Subscriber services and address Subscriber concerns, which feed shall include all cable boxes and platforms (i.e. Xfinity X1).

7.9 **PEG Transport.** During the term of this Franchise, Grantee will provide PEG transport as follows:

(a) The City may transmit signals for the PEG Channels in “real time” upstream from the locations listed in Exhibit B from the ParkTV master control located at City Hall to Grantee’s hub and head-end using existing fiber connections without additional charge from Grantee.

(b) Grantee shall provide the capability for the City, either through a fiber connection, DOCSIS cable modem solution, or other technology of Grantee’s choosing, to transmit live programming from additional locations of the City’s choosing, subject to the City providing or renting necessary modems, encoders, decoders or similar devices, configuring such equipment, and removing such equipment in the event of interference with Grantee’s delivery of Cable Service. To the extent a set of mobile DOCSIS cable modems (or such other devices as may replace DOCSIS modems during the term of this Franchise) are utilized, such modems shall be able to connect to the Subscriber network at permanent or temporary Drops, subject to two (2) weeks prior written notice to Grantee and use upstream capacity on the Subscriber network to transmit programming via the Subscriber network and the connections to the ParkTV master control equal to or of better quality than the PEG signals transmitted to Subscribers.

(i) The City shall be responsible for purchasing high speed internet service for the transmission of live programming at market rates.

(ii) The City shall provide any necessary encoders, decoders or similar devices and shall configure equipment and connections so that signals can be transmitted to the Park TV master control.

(iii) Grantee may request that the City remove an encoder, or similar device if it technically interferes with Grantee’s delivery of Cable Service.

(c) Grantee shall maintain the existing fiber paths/equipment and existing PEG connectivity to the locations listed in Exhibit B during the term of this Franchise, without additional charge (with no recurring, monthly costs or offsets, except that Grantee may invoice the City for any actual repair or maintenance costs which shall not exceed Five Thousand and No/100 Dollars (\$5,000) per year and which shall be estimated to the City in advance whenever possible, and shall be documented and invoiced to the City for payment) to permit the City to transport PEG programming. This will allow the City to

continue cablecasting PEG programming from the locations listed in Exhibit B and will maintain connections from the City to Grantee's hub and head-end without additional charge or offsets.

(d) Grantee reserves any rights it may have under the FCC Section 621 Order, as defined in Section 17.19 herein, to impose lawfully permitted charges for the PEG transport and associated equipment as outlined in this paragraph, but Grantee may impose such charges against the City only to the extent such charges are also imposed by Grantee on all other Minnesota local franchising authorities where Grantee has similar PEG transport obligations. Grantee agrees that any costs incurred by the City under this Section 7.9 shall be considered a PEG capital cost unless prohibited by Applicable Law.

**7.10 Future PEG Transport.** At such time that the City determines:

(a) that the City desires the capacity to allow Subscribers in the City to receive PEG programming (video or character generated) which may originate from schools, City facilities, other government facilities or other designated facilities (other than those indicated in Section 7.8); or

(b) that the City desires to establish or change a location from which PEG programming is originated; or

(c) that the City desires to upgrade the connection to Grantee from an existing signal point of origination,

the City will give Grantee written notice detailing the point of origination and the capability sought by the City. After an agreement to reimburse Grantee for Grantee's out of pocket time and material costs, Grantee will implement any necessary Cable System changes within a reasonable period of time. Nothing herein prevents the City, or a private contractor retained by the City, from constructing said connection.

**7.11 PEG Channel Carriage.**

(a) The City or its designee shall be responsible for developing, implementing, interpreting and enforcing rules for PEG Channel use.

(b) The Grantee shall monitor the PEG Channels for technical quality to ensure that they meet FCC technical standards including those applicable to the carriage of PEG 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 programming. Grantee shall carry all components of the SD/HD PEG Channel(s) including, but not limited to, closed captioning, stereo audio and other elements associated with the programming.

**7.12 PEG Programming Financial Support.**

(a) During the term of the Franchise, Grantee shall pay quarterly to the City a PEG Fee in an amount equal to two percent (2%) of its quarterly Gross Revenues, for the duration of this Franchise. Payments pursuant to this subsection shall be paid to the

City on the same schedule and including the same payment worksheets as the Franchise Fee payments set forth in Section 16.1 of this Franchise.

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

(c) 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.

#### 7.13 **PEG Technical Quality and Support.**

(a) Grantee shall not be required to carry a PEG 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 PEG Channels that results in a material degradation of signal quality or impairment of viewer reception of PEG 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 PEG Channels on its Cable System and shall continue to comply with closed captioning pass-through requirements. There shall be no significant deterioration in a PEG Channels signal from the point of origination upstream to the point of reception (hub or head end) or downstream to the Subscriber on the Cable System.

(b) Grantee shall provide a local (Twin Cities) response phone number, cell number, and e-mail address for local (Twin Cities) technical support staff who are trained to effectively respond to and resolve PEG related issues, who will respond to urgent tech-support requests within fifteen (15) minutes, or as soon thereafter as reasonably possible, and non-urgent tech support requests within three (3) hours or forty-eight (48) hours, depending upon the response time needed. City technical staff will determine what requests are urgent or non-urgent. City agrees to use best efforts to verify that the issue is not on the City's side of the demarcation point before a call is made to Grantee.

7.14 **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 PEG 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 PEG Channels in accordance with the requirements of the Franchise.

7.15 **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.



7.16 **Regional Channel Six.** Grantee shall make available Regional Channel Six as long as it is required to do so by Applicable Law.

7.17 **Compliance with Minnesota Statutes Chapter 238.** In addition to the requirements contained in this Section 7 of this Franchise, Grantee and City shall comply with the PEG requirements mandated by Minnesota Statutes § 238.084.

## **SECTION 8 Regulatory Provisions**

8.1 **Intent.** The City shall have the right to administer and regulate activities under the Franchise to the full extent permitted by Applicable Law. The City may delegate to any other body or Person authority to administer the Franchise and to monitor the performance of Grantee pursuant to the Franchise. Grantee shall cooperate with any such delegates of the City.

8.2 **Delegation of Authority to Regulate.** The City reserves the right to delegate its regulatory authority wholly or in part to agents of the City, including, but not limited to, an agency which may be formed to regulate several franchises in the region in a manner consistent with Applicable Laws. As of the Effective Date of this Franchise, the City, or any designee thereof, shall have continuing regulatory jurisdiction and supervision over the Cable System and Grantee's operation under the Franchise.

### **8.3 Regulation of Rates and Charges.**

(a) **Right to Regulate.** The City reserves the right to regulate rates or charges for any Cable Service within the limits of Applicable Law, to enforce rate regulations prescribed by the FCC, and to establish procedures for said regulation or enforcement.

(b) **Notice of Change in Rates and Charges.** Throughout the term of this Franchise, Grantee shall give the City and all Subscribers within the City at least thirty (30) Days' notice of any intended modifications or additions to Subscriber rates or charges. Nothing in this subsection shall be construed to prohibit the reduction or waiving of rates or charges in conjunction with promotional campaigns for the purpose of attracting Subscribers or users.

(c) **Rate Discrimination Prohibited.** Within any category of Subscribers, Grantee shall not discriminate among Subscribers with regard to rates and charges made for any service based on considerations of race, color, creed, sex, marital or economic status, national origin, sexual preference, or (except as allowed by Applicable Law) neighborhood of residence, except as otherwise provided herein; and for purposes of setting rates and charges, no categorization of Subscribers shall be made by Grantee on the basis of those considerations. Nevertheless, Grantee shall be permitted to establish (1) discounted rates and charges for providing Cable Service to low-income, disabled, or low-income elderly Subscribers, (2) promotional rates, and (3) bulk rate and package discount pricing.

## **SECTION 9 Bond**

9.1 **Performance Bond.** Upon the Effective Date of this Franchise and at all times thereafter, for the term of this Franchise or any renewal running to the City Grantee shall file

with the City at its own expense, and at all times thereafter maintain in full force and effect, a bond in the sum of Fifty Thousand and No/100 Dollars (\$50,000.00) in such form and with such sureties as shall be acceptable to City, conditioned upon the faithful performance by Grantee of this Franchise and upon the further condition that in the event Grantee shall fail to comply with any law, ordinance or regulation, there shall be recoverable jointly and severally from the principal and surety of the bond, any damages or losses suffered by City as a result, including the full amount of any compensation, indemnification or cost of removal of any property of Grantee, including a reasonable allowance for attorneys' fees and costs (with interest at two percent (2%) in excess of the then prime rate), up to the full amount of the bond, and which bond shall further guarantee payment by Grantee of all claims and liens against City, or any public property, and taxes due to City, which arise by reason of the construction, operation, maintenance or use of the Cable System.

9.2 **Rights.** The rights reserved by City with respect to the bond are in addition to all other rights the City may have under this Franchise or any other law.

9.3 **Reduction of Bond Amount.** City may, in its sole discretion, reduce the amount of the bond.

9.4 **Procedure to Draw on Bond.**

(a) The City shall provide Grantee thirty (30) Days written notice of its intent to draw on the performance bond together with the reason for such draw. Grantee shall have the right to cure or petition for additional time.

(b) The time for Grantee to correct any violation or liability, shall be extended by the City if the necessary action to correct such violation or liability is, in the sole determination of the 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 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 in accordance with the procedure set forth in Section 11, the City shall be entitled to collect from the performance bond any damages incurred by the 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 the City has not notified Grantee of any damages incurred by the City as a result of Grantee's operations pursuant to the Franchise or as a result of said default.

(e) The rights reserved to the City with respect to the performance bond are in addition to all other rights of the 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 the City may have.

**SECTION 10 Letter of Credit**

**10.1 Letter of Credit.** If there is an uncured breach by Grantee of a material provision of this Franchise or a pattern of repeated violations of any provision(s) of this Franchise that remain uncured, then Grantee shall, upon written request, establish and provide to the City, as security for the faithful performance by Grantee of all of the provisions of this Franchise, a letter of credit from a financial institution satisfactory to the City in the amount of Twenty Thousand and No/100 Dollars (\$20,000.00) ("Letter of Credit"). In no event shall Grantee fail to post a Twenty Thousand and No/100 Dollars (\$20,000.00) Letter of Credit within ten (10) Days following receipt of a notice of franchise violation pursuant to this Section 10.1. The form, manner and content of the Letter of Credit shall be subject to the approval of the City. Failure to post said Letter of Credit shall constitute a separate material violation of this Franchise, unless the breach is cured within such ten (10) Day period. The Letter of Credit shall serve as a common security for the faithful performance by Grantee of all the provisions of this Franchise and compliance with all orders, permits and directions of the City and the payment by Grantee of any claim, liens, costs, expenses and taxes due the City which arise by reason of the construction, operation or maintenance of the Cable System. If Grantee fails to establish the Letter of Credit as required, the City may take whatever action is appropriate to require the establishment of that fund and may recover its costs, reasonable attorneys' fees, and an additional penalty of Five Thousand Dollars (\$5,000) in that action.

**10.2 Withdrawal of Funds.** The Letter of Credit shall permit the City to withdraw funds upon demand (sight draft). Grantee shall not use the Letter of Credit for other purposes and shall not assign, pledge or otherwise use the Letter of Credit as security for any purpose.

**10.3 Restoration of Funds.** Within ten (10) Days after notice to it that any amount has been withdrawn by the City from the Letter of Credit pursuant to Section 10.8, Grantee shall deposit a sum of money sufficient to restore such the Letter of Credit to the required amount.

**10.4 Liquidated Damages.** In addition to recovery of any monies owed by Grantee to City or damages to City as a result of any acts or omissions by Grantee pursuant to the Franchise, City in its sole discretion may charge to and collect from the Letter of Credit the following liquidated damages:

- (a) For failure to provide data, documents, reports or information or to cooperate with City during an application process, audit, or System review, the liquidated damage shall be Two Hundred Fifty Dollars (\$250.00) per Day for each Day, or part thereof, such failure occurs or continues.
- (b) For failure to comply with any of the provisions of this Franchise for which a penalty is not otherwise specifically provided pursuant to this Section 10.4, the liquidated damage shall be Two Hundred Fifty Dollars (\$250.00) per Day for each Day, or part thereof, such failure occurs or continues.
- (c) For failure to test, analyze and report on the performance of the System following a request by City, the liquidated damage shall be Two Hundred Fifty Dollars (\$250.00) per Day for each Day, or part thereof, such failure occurs or continues.

(d) Forty-five Days following notice from City of a failure of Grantee to comply with construction, operation or maintenance standards, the liquidated damage shall be Five Hundred Dollars (\$500.00) per Day for each Day, or part thereof, such failure occurs or continues.

(e) For failure to provide the services Grantee has proposed, including but not limited to the implementation and the utilization of the PEG Channels, the liquidated damage shall be Two Hundred Fifty (\$250.00) per Day for each Day, or part thereof, such failure occurs or continues.

(f) For failure to provide the Letter of Credit required by this Section 10.1, the liquidated damage shall be Two Hundred Fifty (\$250.00) per Day for each Day, or part thereof, such failure occurs or continues.

**10.5 Each Violation a Separate Violation.** Each violation of any provision of this Franchise shall be considered a separate violation for which separate liquidated damages can be imposed.

**10.6 Maximum 120 Days.** Any liquidated damages for any given violation shall be imposed upon Grantee for a maximum of one hundred twenty (120) Days. If after that amount of time Grantee has not cured or commenced to cure the alleged breach to the satisfaction of the City, the City may pursue all other remedies.

**10.7 Withdrawal of Funds to Pay Taxes.** If Grantee fails to pay to the City any taxes due and unpaid; or fails to repay to the City, any damages, costs or expenses which the City shall be compelled to pay by reason of any act or default of the Grantee in connection with this Franchise; or fails, after thirty (30) Days' notice of such failure by the City to comply with any provision of the Franchise which the City reasonably determines can be remedied by an expenditure of the Letter of Credit, the City may then withdraw such funds from the Letter of Credit. Payments are not Franchise Fees as defined in Section 16 of this Franchise.

**10.8 Procedure for Draw on Letter of Credit.** Whenever the City finds that Grantee has allegedly violated one (1) or more terms, conditions or provisions of this Franchise, a written notice shall be given to Grantee. The written notice shall describe in reasonable detail the alleged violation so as to afford Grantee an opportunity to remedy the violation. Grantee shall post the Letter of Credit within ten (10) Days of the date of receipt of a written notice of violation, Grantee shall have thirty (30) Days subsequent to receipt of the notice in which to correct the violation before the City may require Grantee to make payment of damages, and further to enforce payment of damages through the Letter of Credit. Grantee may, within ten (10) Days of receipt of notice, notify the City that there is a dispute as to whether a violation or failure has, in fact, occurred. Such notice by Grantee shall specify with particularity the matters disputed by Grantee and shall stay the running of the thirty (30) Day cure period but shall not serve to delay Grantee's obligation to post the Letter of Credit within said ten (10) Day period following receipt of the notice of violation.

(a) City shall hear Grantee's dispute at the next regularly scheduled or specially scheduled City meeting. Grantee shall have the right to speak and introduce evidence. The City shall determine if Grantee has committed a violation and shall make written

findings of fact relative to its determination. If a violation is found, Grantee may petition for reconsideration.

(b) If after hearing the dispute, the claim is upheld by the City, then Grantee shall have thirty (30) Days within which to remedy the violation before City may require payment of all liquidated damages due it.

**10.9 Time for Correction of Violation.** The time for Grantee to correct any alleged violation may be extended by the City if the necessary action to correct the alleged violation is of such a nature or character as to require more than thirty (30) Days within which to perform provided Grantee commences corrective action within fifteen (15) Days and thereafter uses reasonable diligence, as determined by the City, to correct the violation.

**10.10 Grantee's Right to Pay Prior to Letter of Credit Draw.** Grantee shall have the opportunity to make prompt payment of any assessed liquidated damages and if Grantee fails to promptly remit payment to the City, the City may resort to a draw from the Letter of Credit in accordance with the terms of this Section 10 of the Franchise.

**10.11 Failure to so Replenish Letter of Credit.** If any Letter of Credit is not so replaced, City may draw on said security fund for the whole amount thereof and hold the proceeds, without interest, and use the proceeds to pay costs incurred by City in performing and paying for any or all of the obligations, duties and responsibilities of Grantee under this Franchise that are not performed or paid for by Grantee pursuant hereto, including attorneys' fees incurred by the City in so performing and paying. The failure to so replace any Letter of Credit may also, at the option of City, be deemed a default by Grantee under this Franchise. The drawing on the Letter of Credit by City and use of the money so obtained for payment or performance of the obligations, duties and responsibilities of Grantee which are in default, shall not be a waiver or release of such default.

**10.12 Collection of Funds Not Exclusive Remedy.** The collection by City of any damages or monies from the Letter of Credit shall not affect any other right or remedy available to City, nor shall any act, or failure to act, by City pursuant to the Letter of Credit, be deemed a waiver of any right of City pursuant to this Franchise or otherwise. Notwithstanding this section, however, should the City elect to impose liquidated damages that remedy shall remain the City's exclusive remedy for the one hundred twenty (120) Day period set forth in Section 10.6.

## **SECTION 11 Default**

**11.1 Basis for Default.** City shall give written notice of default to Grantee if City, in its sole discretion, determines that Grantee has:

- (a) Violated any material provision of this Franchise or the acceptance hereto or any rule, order, regulation or determination of the City, state or federal government, not in conflict with this Franchise;
- (b) Attempted to evade any provision of this Franchise or the acceptance hereof;
- (c) Practiced any fraud or deceit upon City or Subscribers;

- (d) Made a material misrepresentation of fact in the application for or negotiation of this Franchise; or
- (e) Incurred a twelve (12) month or more delay in the construction schedule.

**11.2 Default Procedure.** If Grantee fails to cure such default within thirty (30) Days after the giving of such notice (or if such default is of such a character as to require more than thirty (30) Days within which to cure the same, and Grantee fails to commence to cure the same within said thirty (30) Day period and thereafter fails to use reasonable diligence, in City's sole opinion, to cure such default as soon as possible), then, and in any event, such default shall be a substantial breach and City may elect to terminate the Franchise. The City may place the issue of revocation and termination of this Franchise before the governing body of City at a regular meeting. If City decides there is cause or reason to terminate, the following procedure shall be followed:

- (a) City shall provide Grantee with a written notice of the reason or cause for proposed termination and shall allow Grantee a minimum of thirty (30) Days subsequent to receipt of the notice in which to correct the default.
- (b) Grantee shall be provided with an opportunity to be heard at a public hearing prior to any decision to terminate this Franchise.
- (c) If, after notice is given and an opportunity to cure, at Grantee's option, a public hearing is held, and the City determines there was a violation, breach, failure, refusal or neglect, the City may declare by resolution the Franchise revoked and of no further force and effect unless there is compliance within such period as the City may fix, such period may not be less than thirty (30) Days. No opportunity for compliance need be granted for fraud or misrepresentation.

**11.3 Failure to Enforce.** Grantee shall not be relieved of any of its obligations to comply promptly with any provision of the Franchise by reason of any failure of the City to enforce prompt compliance, and City's failure to enforce shall not constitute a waiver of rights or acquiescence in Grantee's conduct.

**11.4 Compliance with the 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 (1) year after they become effective, unless otherwise stated, and shall conform to federal laws and regulations regarding cable as they become effective.
- (b) 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.

## **SECTION 12 Foreclosure and Receivership**

**12.1 Foreclosure.** Upon the foreclosure or other judicial sale of the Cable System, Grantee shall notify the City of such fact and such notification shall be treated as a notification that a change in control of Grantee has taken place, and the provisions of this Franchise governing the consent to transfer or change in ownership shall apply without regard to how such transfer or change in ownership occurred.

**12.2 Receivership.** The City shall have the right to cancel this Franchise subject to any applicable provisions of state law, including the Bankruptcy Act, one hundred twenty (120) Days after the appointment of a receiver or trustee to take over and conduct the business of Grantee, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) Days, or unless:

(a) Within one hundred twenty (120) Days after his election or appointment, such receiver or trustee shall have fully complied with all the provisions of this Franchise and remedied all defaults thereunder; and,

(b) Such receiver or trustee, within said one hundred twenty (120) Days, shall have executed an agreement, duly approved by the Court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Franchise.

## **SECTION 13 Reporting Requirements**

**13.1 Quarterly Reports.** Within forty (45) Days after the end of each calendar quarter, Grantee shall submit to the City along with its Franchise Fee payment, a report showing the basis for computation of the Franchise Fee and PEG Fee payments signed by an authorized representative of Grantee in form and substance substantially equivalent to Exhibit C attached hereto. This report shall separately indicate Grantee's Gross Revenues within the City including, but not limited to such items as listed in the definition of "Gross Revenues" at Section 1.20 of this Franchise.

**13.2 Monitoring and Compliance Reports.** Upon request, but no more than once a year, Grantee shall provide a written report of any and all FCC technical performance tests for the residential network required in FCC Rules and Regulations as now or hereinafter constituted.

**13.3 Other Reports.** Upon request of the City and in no event later than thirty (30) Days from the date of receipt of such request, Grantee shall, free of charge, prepare and furnish to the

City, at the times and in the form prescribed, such additional reports with respect to its operation, affairs, transactions, or property, as may be reasonably necessary to ensure compliance with the terms of this Franchise. Grantee and City may in good faith agree upon taking into consideration Grantee's need for the continuing confidentiality as prescribed herein. Neither City nor Grantee shall unreasonably demand or withhold information requested pursuant with the terms of this Franchise.

**13.4 Confidential and Trade Secret Information.** The City shall follow, all Applicable Laws and procedures for protecting any confidential and trade secret information of Grantee that may be provided to City. Grantee shall not be relieved of its obligation to provide information or data required under this Franchise simply because the City may not be able to guarantee its confidentiality. Grantee acknowledges that the City shall at all times comply with the Minnesota Government Data Practices Act ("MGDPA") related to the release of information and nothing herein shall be read to modify the City's obligations under the MGDPA.

**13.5 Communications with Regulatory Agencies.**

(a) Upon written request, Grantee shall submit to City copies of any pleading, applications, notifications, communications and documents of any kind, submitted by Grantee or its Affiliates to any federal, state or local courts, regulatory agencies and other government bodies if such documents directly relate to the operations of Grantee's Cable System within the Franchise Area. Grantee shall submit such documents to City no later than thirty (30) Days after receipt of City's request. Grantee shall not claim confidential, privileged or proprietary rights to such documents unless under Applicable Law such documents have been determined to be confidential by a court of competent jurisdiction, or a federal or state agency. With respect to all other reports, documents and notifications provided to any federal, state or local regulatory agency as a routine matter in the due course of operating Grantee's Cable System within the Franchise Area, Grantee shall make such documents available to City upon City's written request.

(b) In addition, Grantee and its Affiliates shall within ten (10) Days of any communication to or from any judicial or regulatory agency regarding any alleged or actual violation of this Franchise, City regulation or other requirement relating to the System, use its best efforts to provide the City a copy of the communication, whether specifically requested by the City to do so or not.

**SECTION 14 Customer Service Policies**

**14.1 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. Grantee shall provide the City with the name, address and telephone number of an office that will act as the Grantee's agent to receive complaints, regarding quality of service, equipment malfunctions, billings, and similar matters. Grantee will maintain an "escalated complaint process" to address unresolved complaints from Subscribers. A team of specifically identified employees of Grantee shall be available to the City via email and telephone for reporting issues. These specifically identified employees of Grantee



will have the ability to take actions to resolve Subscriber complaints relating to billing, property or service restoration, technical appointments, or any other Subscriber matters when necessary. Grantee will follow-up with the City in writing by email (and by phone when necessary) with a summary of the results of the complaint(s).

**14.2 Customer Service Agreement and Written Information.** Grantee shall provide to Subscribers a comprehensive service agreement and information in writing for use in establishing Subscriber service. Written information shall, at a minimum, contain the following information:

- (a) Services to be provided and rates for such services.
- (b) Billing procedures.
- (c) Service termination procedure.
- (d) Change in service notifications.
- (e) Converter/Subscriber terminal equipment policy.
- (f) How complaints are handled including Grantee's procedure for investigation and resolution of Subscriber complaints.
- (g) 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.

**14.3 Reporting Complaints.**

- (a) The requirements of this Section 14.3 shall be subject to federal law regarding Subscriber privacy. Grantee shall maintain all Subscriber data available for City inspection. Subscriber data shall include the date, name, address, 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 Grantee shall provide City with reasonable access to the information maintained by Grantee pursuant to this Section 14.3, subject to federal law regarding Subscriber privacy.
- (b) Subject to federal law and upon reasonable request by the City, Grantee shall, within a reasonable amount of time, provide City with such Subscriber data for its review.

**14.4 Customer Service Standards.**

- (a) The City hereby adopts the customer service standards set forth in Part 76, (§76.309) of the FCC's rules and regulations, as amended.
- (b) Grantee shall provide City with information which shall describe in detail Grantee's compliance with each and every term and provision of Section 14.6.

(c) Grantee shall comply in all respects with the customer service requirements established by the FCC and those set forth herein. The City reserves the right to enact additional consumer protection laws or requirements to the extent such requirements are not inconsistent with, and preempted by, the FCC's customer service standards.

**14.5 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.

**14.6 Cable System Office Hours and Telephone Availability.** Grantee shall comply with the standards and requirements for customer service set forth below during the term of this Franchise.

(a) 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.

(i) Trained Grantee representatives will be available to respond to customer telephone inquiries during Normal Business Hours.

(ii) 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.

(b) 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.

(c) 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.

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

(e) Customer service center and bill payment locations will be open at least during Normal Business Hours and will be conveniently located.

(f) The Grantee shall utilize such equipment and software and keep such records as are necessary or required to enable the City to determine whether the Grantee is complying with all telephone answering standards required by applicable customer service regulations and laws, as amended from time to time.

**14.7 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:

(a) Standard Installations will be performed within seven (7) business days after an order has been placed. "Standard" Installations are those that are located up to one hundred twenty-five (125) feet from the existing distribution system as more specifically set forth in Section 6.8(b).

(b) 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. Grantee must begin actions to correct other Service problems the next business day after notification of the Service problem.

(c) 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.)

(d) Grantee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

(e) 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.

#### 14.8 **Communications between Grantee and Subscribers.**

(a) Refunds. Refund checks will be issued promptly, but no later than either:

(i) The customer's next billing cycle following resolution of the request or thirty (30) Days, whichever is earlier, or

(ii) The return of the equipment supplied by Grantee if Cable Service is terminated.

(b) 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.

#### 14.9 **Billing:**

(a) 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.

(b) In case of a billing dispute, Grantee must respond to a written complaint from a Subscriber within thirty (30) Days.

**14.10 Subscriber Information.**

(a) Grantee will provide written information on each of the following areas at the time of installation of Cable Service, at least annually to all Subscribers, and at any time upon request:

- (i) Products and services offered;
- (ii) Prices and options for programming services and conditions of subscription to programming and other services;
- (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 office.

(b) 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 14.10.

**14.11 Notice of Rate or Programming Changes.** Grantee shall give thirty (30) Days written notice to both Subscribers and the City before implementing any rate or Service change within the control of Grantee. For the purpose of this section a "Service change" shall not include channel additions or moves that do not impact rates. 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.

**14.12 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 and a current Channel line-up showing all Channels available in the City shall be maintained on file with City and shall be available for public inspection. Grantee shall also provide on a monthly basis a copy of a sample Subscriber bill to the City.

**14.13 Refund Policy.** If a Subscriber's Cable Service is interrupted or discontinued, without cause, for twenty-four (24) or more consecutive hours, 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.

**14.14 Late Fees.** Grantee shall comply with all Applicable 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.

**14.15 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 a commission of the City.

**14.16 Subscriber Bills.** Subscriber bills shall be designed in such a way as to present the information contained therein clearly and comprehensibly to Subscribers, and in a way that: (A) is not misleading; and (B) does not omit material information. Notwithstanding anything to the contrary in Section 14.9, above, Grantee may, in its sole discretion, consolidate costs on Subscriber bills as may otherwise be permitted by Section 622(c) of the Cable Act (47 U.S.C. § 542(c)).

**14.17 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.

**14.18 Notification of Complaint Procedure.** Grantee shall have printed clearly and prominently on each Subscriber bill and in the customer service agreement provided for in Section 14.2, the twenty-four (24) hour Grantee phone number for Subscriber complaints. Additionally, Grantee shall provide information to Subscribers 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.

**14.19 Subscriber Privacy.**

(a) To the extent required by Minnesota Statutes § 238.084 Subd. 1(s) Grantee shall comply with the following:

(i) 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.

(ii) 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.

(iii) 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 (ii) of this section.

**14.20 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.

## **SECTION 15 Subscriber Practices**

**15.1 Subscriber Rates.** There shall be no charge for disconnection of any installation or outlet. If any Subscriber fails to pay a properly due monthly Subscriber fee, or any other properly due fee or charge, Grantee may disconnect the Subscriber's service outlet, provided, however, that such disconnection shall not be affected until after the later of: (i) forty-five (45) Days after the original due date of said delinquent fee or charge; or (ii) ten (10) Days after delivery to Subscriber of written notice of the intent to disconnect. If a Subscriber pays before expiration of the later of (i) or (ii), Grantee shall not disconnect. After disconnection, upon payment in full of the delinquent fee or charge and the payment of a reconnection charge, Grantee shall promptly reinstate the Subscriber's Cable Service.

**15.2 Refunds to Subscribers shall be made or determined in the following manner:**

(a) If Grantee fails, upon request by a Subscriber, to provide any service then being offered, Grantee shall promptly refund all deposits or advance charges paid for the service in question by said Subscriber. This provision does not alter Grantee's responsibility to Subscribers under any separate contractual agreement or relieve Grantee of any other liability.

(b) If any Subscriber terminates any monthly service because of failure of Grantee to render the service in accordance with this Franchise, Grantee shall refund to such Subscriber the proportionate share of the charges paid by the Subscriber for the

services not received. This provision does not relieve Grantee of liability established in other provisions of this Franchise.

(c) If any Subscriber terminates any monthly service prior to the end of a prepaid period, a proportionate amount of any prepaid Subscriber service fee, using the number of days as a basis, shall be refunded to the Subscriber by Grantee.

## **SECTION 16 Compensation and Financial Provisions**

### **16.1 Franchise Fees.**

(a) During the term of the Franchise, Grantee shall pay quarterly to the City or its delegate a Franchise Fee in an amount equal to five percent (5%) of its quarterly Gross Revenues. If any such law, regulation or valid rule alters the five percent (5%) Franchise Fee ceiling established by the Cable Act, then the City shall have the authority to (but shall not be required to) increase the Franchise Fee accordingly, provided such increase is for purposes not inconsistent with Applicable Law.

(b) Franchise Fees shall be paid quarterly. The payments shall be made to the City within forty-five (45) Days following the end of each calendar quarter. Grantee shall include with each quarterly payment a Franchise Fee payment worksheet, in form and substance substantially similar to Exhibit C, signed by an authorized representative of Grantee. No acceptance of any payment shall be construed as an accord that the amount paid is in fact, the correct amount, nor shall such acceptance of payment be construed as a release of any claim which the City may have for further or additional sums payable under the provisions of this section.

(c) Neither current nor previously paid Franchise Fees shall be subtracted from the Gross Revenue amount upon which Franchise Fees are calculated and due for any period, unless otherwise required by Applicable Law.

(d) Any Franchise Fees owing pursuant to this Franchise which remain unpaid after the due dates specified herein shall be delinquent and shall immediately begin to accrue interest at twelve percent (12%) per annum or two percent (2%) above prime lending rate as quoted by the Wall Street Journal, whichever is greater.

**16.2 Auditing and Financial Records.** Throughout the term of this Franchise, the Grantee agrees that the City or its designee, upon reasonable prior written notice of twenty (20) Days to the Grantee, may review such of the Grantee's books and records regarding the operation of the Cable System and the provision of Cable Service in the Franchise Area which are reasonably necessary to monitor and enforce Grantee's compliance with the provisions of this Franchise. Grantee shall provide such requested information as soon as possible and in no event more than twenty (20) Days unless Grantee explains that it is not feasible to meet this timeline and provides a written explanation for the delay and an estimated reasonable date for when such information will be provided. All such documents pertaining to financial matters that may be the subject of an inspection by the City shall be retained by the Grantee for a minimum period of seven (7) years, pursuant to Minnesota Statutes § 541.05. The Grantee shall not deny the City access to any of the Grantee's records on the basis that the Grantee's records are under the control of any parent corporation, Affiliated entity or a third party. The City may request in

writing copies of any such records or books that are reasonably necessary, and the Grantee shall provide such copies within thirty (30) Days of the receipt of such request. One (1) copy of all reports and records required under this or any other section shall be furnished to the City at the sole expense of the Grantee. If the requested books and records are too voluminous, or for security reasons cannot be copied or removed, then the Grantee may request, in writing within ten (10) Days of receipt of such request, that the City inspect them at the Grantee's local offices or at one of Grantee's offices more convenient to City or its duly authorized agent. If any books or records of the Grantee are not kept in such office and not made available in copies to the City upon written request as set forth above, and if the City determines that an examination of such records is necessary for the enforcement of this Franchise, then all reasonable travel expenses incurred in making such examination shall be paid by the Grantee.

**16.3 Review of Record Keeping Methodology.** Upon request, Grantee agrees to meet with a representative of the City or its designee to review its methodology of record-keeping, financial reporting, computing Franchise Fee obligations, and other procedures the understanding of which the City deems necessary for understanding the meaning of reports and records.

**16.4 Audit of Records.** The City or its authorized agent may at any time and at the City's own expense conduct an independent audit of the revenues of Grantee in order to verify the accuracy of Franchise Fees or PEG Fees paid to the City. Grantee and each parent company of Grantee shall cooperate fully in the conduct of such audit. In the event it is determined through such audit that Grantee has underpaid Franchise Fees in an amount of five percent (5%) or more than was due the City, then Grantee shall reimburse the City for the entire cost of the audit within thirty (30) Days of the completion and acceptance of the audit by the City.

**16.5 Records to be reviewed.** The City agrees to request access to only those books and records, in exercising its rights under this section, which it deems reasonably necessary for the enforcement and administration of the Franchise.

**16.6 Indemnification by Grantee.** Grantee shall, at its sole expense, fully indemnify, defend and hold harmless the City, and in their capacity as such, the officers, agents and employees thereof (collectively the "Indemnified Parties"), from and against any and all claims, suits, actions, demands, liability and judgments for damage or otherwise except those arising wholly from negligence on the part of the Indemnified Parties; for actual or alleged injury to Persons or property, including loss of use of property due to an occurrence, whether or not such property is physically damaged or destroyed, in any way arising out of or through or alleged to arise out of or through the acts or omissions of Grantee or its officers, agents, employees, or contractors or to which Grantee's or its officers, agents, employees or contractors acts or omissions in any way contribute, and whether or not such acts or omissions were authorized or contemplated by this Franchise or Applicable Law; arising out of or alleged to arise out of any claim for damages for Grantee's invasion of the right of privacy, defamation of any Person, firm or corporation, or the violation of infringement of any copyright, trademark, trade name, service mark or patent, or of any other right of any Person, firm or corporation; arising out of or alleged to arise out of Grantee's failure to comply with the provisions of any Applicable Law. Nothing herein shall be deemed to prevent the Indemnified Parties from participating in the defense of any litigation by their own counsel at such parties' expense. Such participation shall not under any circumstances relieve Grantee from its duty of defense against liability or of paying any judgment entered against the Indemnified Parties.



**16.7 Grantee Insurance.** Upon the Effective Date, Grantee shall, at its sole expense take out and maintain during the term of this Franchise public liability insurance with a company licensed to do business in the State of Minnesota with a rating by A.M. Best & Co. of not less than "A-" that shall protect the Grantee, City and its officials, officers, directors, employees and agents from claims which may arise from operations under this Franchise, whether such operations be by the Grantee, its officials, officers, directors, employees and agents or any subcontractors of Grantee. This liability insurance shall include, but shall not be limited to, protection against claims arising from bodily and personal injury and damage to property, resulting from Grantee's vehicles, products and operations. The amount of insurance for single limit coverage applying to bodily and personal injury and property damage shall not be less than Four Million Dollars (\$4,000,000). The liability policy shall include:

- (a) The policy shall provide coverage on an "occurrence" basis.
- (b) The policy shall cover personal injury as well as bodily injury.
- (c) The policy shall 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.
- (d) Broad form property damage liability shall be afforded.
- (e) City shall be named as an additional insured on the policy.
- (f) An endorsement shall be provided 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.
- (g) Standard form of cross-liability shall be afforded.
- (h) An endorsement stating that the policy shall not be canceled without thirty (30) Days' notice of such cancellation given to City.
- (i) City reserves the right to adjust the insurance limit coverage requirements of this Franchise no more than once every three (3) years. Any such adjustment by City will be no greater than the increase in the State of Minnesota Consumer Price Index (all consumers) for such three (3) year period.
- (j) Upon the Effective Date, Grantee shall submit to City a certificate documenting the required insurance, as well as any necessary properly executed endorsements. The certificate and documents evidencing insurance shall be in a form acceptable to City and shall provide 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. City will not be obligated, however, to review such endorsements or certificates or other evidence of insurance, or to advise Grantee of any deficiencies in such documents and 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 17 Miscellaneous Provisions**

**17.1 Posting and Publication.** The Summary of Ordinance for Publication ("Summary") attached hereto as Exhibit D shall be published at least once in the official newspaper of the City. Grantee shall assume the cost of posting and publication of the Summary as such posting and publication is required by law and such is payable upon Grantee's filing of acceptance of this Franchise.

**17.2 Guarantee of Performance.** Grantee agrees that it enters into this Franchise voluntarily in order to secure and in consideration of the grant from the City of a ten (10) year Franchise. Performance pursuant to the terms and conditions of this Franchise is guaranteed by Grantee.

**17.3 Minnesota Statutes.** This Franchise cannot be changed orally but only by an instrument in writing executed by the parties. This Franchise is made pursuant to Minnesota Statutes Chapter 238 and the City Code and is intended to comply with all requirements set forth therein.

**17.4 Consent.** Wherever the consent or approval of either Grantee or the City is specifically required in this agreement, such consent or approval shall not be unreasonably withheld.

**17.5 Prior Franchise Terminated.** The cable franchise originally granted by Ordinance No. 2309-06 is hereby terminated. Nothing herein shall serve to waive any rights the parties may have under previous agreements subject only to the applicable state statute of limitations.

**17.6 Franchise Acceptance.** No later than thirty (30) Days following City Council approval of this Franchise, Grantee shall execute and return to the City two (2) original franchise agreements. The executed agreements shall be returned to the City accompanied by performance bonds and evidence of insurance, all as provided in this Franchise. In the event Grantee fails to accept this Franchise, or fails to provide the required documents, this Franchise shall be null and void. The Grantee agrees that despite the fact that its written acceptance may occur after the Effective Date, the obligations of this Franchise shall become effective on the Effective Date.

**17.7 Amendment of Franchise.** Grantee and City may agree, from time to time, to amend this Franchise. Such written amendments may be made to address technology changes or advances subsequent to a review session pursuant to Section 2.6 or at any other time if City and 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 City's exercise of its police powers.

**17.8 Notice.** All notices, reports, or demands required to be given in writing under this Franchise shall be deemed to be given when delivered personally to any officer of the Grantee or the City's administrator of this Franchise during Normal Business Hours or forty-eight (48) hours after it is deposited in the United States mail in a sealed envelope, with registered or certified mail postage prepaid thereon, addressed to the party to whom notice is being given, as follows:

If to City:                   City Manager  
                                  City of St. Louis Park  
                                  5005 Minnetonka Boulevard  
                                  St. Louis Park, MN 55416

If to Grantee:               General Manager  
                                  Comcast  
                                  10 River Park Plaza  
                                  St. Paul, MN 55107

Such addresses may be changed by either party upon notice to the other party given as provided in this section.

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

**17.9 Force Majeure.** In the event that either party is prevented or delayed in the performance of any of its obligations, under this Franchise by reason of acts of God, floods, fire, hurricanes, tornadoes, earthquakes, or other unavoidable casualties, insurrection, war, riot, vandalism, strikes, delays in receiving permits where it is not the fault of Grantee, public easements, sabotage, acts or omissions of the other party, or any other similar event beyond the reasonable control of that party, it shall have a reasonable time under the circumstances to perform such obligation under this Franchise, or to procure a substitute for such obligation to the reasonable satisfaction of the other party.

**17.10 Work of Contractors and Subcontractors.** Work by contractors and subcontractors is subject to the same restrictions, limitations and conditions as if the work were performed by Grantee. Grantee shall be responsible for all work performed by its contractors and subcontractors, and others performing work on its behalf as if the work were performed by it and shall ensure that all such work is performed in compliance with this Franchise, the City Code and other Applicable Law, and shall be jointly and severally liable for all damages and correcting all damage caused by them. It is Grantee's responsibility to ensure that contractors, subcontractors or other Persons performing work on Grantee's behalf are familiar with the requirements of this Franchise, the City Code and other Applicable Laws governing the work performed by them.

**17.11 Governing Law.** This Franchise shall be deemed to be executed in the State of Minnesota, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of Minnesota, as applicable to contracts entered into and performed entirely within the state.

**17.12 Nonenforcement by City.** Grantee shall not be relieved of its obligation to comply with any of the provisions of this Franchise by reason of any failure of the City or to enforce prompt compliance.

**17.13 Captions.** The paragraph captions and headings in this Franchise are for convenience and reference purposes only and shall not affect in any way the meaning of interpretation of this Franchise.

**17.14 Calculation of Time.** Where the performance or doing of any act, duty, matter, payment or thing is required hereunder and the period of time or duration for the performance is prescribed and fixed herein, the time shall be computed so as to exclude the first and include the last Day of the prescribed or fixed period or duration of time. When the last Day of the period falls on Saturday, Sunday or a legal holiday that Day shall be omitted from the computation and the next business Day shall be the last Day of the period.

**17.15 Rights Cumulative.** All rights and remedies given to the City by this Franchise or retained by the 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 the 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 the 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.

**17.16 Grantee Acknowledgment of Validity of Franchise.** Grantee acknowledges that it has had an opportunity to review the terms and conditions of this Franchise and that under current law Grantee believes that said terms and conditions are not unreasonable or arbitrary, and that Grantee believes the City has the power to make the terms and conditions contained in this Franchise. Grantee agrees that it will not, at any time, set up against the City in any claim or proceeding, any condition or term of the Franchise as unreasonable, arbitrary, void as of the Effective Date of this Franchise or that the City had no power or authority to make such term or condition.

**17.17 Survival of Terms.** Upon the termination or forfeiture of the Franchise, Grantee shall no longer have the right to occupy the Right-of-Ways for the purpose of providing Cable Service. However, Grantee's obligations to the City (other than the obligation to provide service to Subscribers) shall survive according to their terms.

**17.18 Competitive Equity.**

(a) The City reserves the right to grant additional franchises or similar authorizations to provide Video Programming services via Cable Systems or other Wireline MVPDs. The City intends to treat Wireline MVPDs in a nondiscriminatory manner to the extent permissible under Applicable Law. If, following the Effective Date of this Franchise, the City grants such an additional franchise or authorization to a Wireline MVPD and Grantee believes the City has done so on terms materially more favorable than the obligations under this Franchise, then the provisions of this Section 17.18 will apply.

(b) As part of this Franchise, the City and Grantee have mutually agreed upon the following terms as a condition of granting the Franchise, which terms may place the Grantee at a significant competitive disadvantage if not required of a Wireline MVPD: the obligation to pay to the City a Franchise Fee, Gross Revenues as provided for and

defined in this Franchise, and the obligation to comply with the requirements in this Franchise regarding PEG funding, PEG Channels, records and reports, security instruments, audits, dispute resolution, remedies, notice and opportunity to cure, and customer service obligations (hereinafter "Material Obligations"). The City and Grantee further agree that this provision shall not require a word for word identical franchise or authorization for competitive equity so long as the regulatory and financial burdens on each entity are materially equivalent.

(c) Within one (1) year of the adoption of a Wireline MVPD franchise or similar authorization, Grantee must notify the City in writing of the Material Obligations in this Franchise that Grantee believes exceed the Material Obligations of the wireline competitor's franchise or similar authorization. The City and Grantee agree that they will use best efforts in good faith to negotiate Grantee's proposed Franchise modifications, and that such negotiation will proceed and conclude within a ninety (90) Day time period, unless that time period is reduced or extended by mutual agreement of the parties. If the City and Grantee reach agreement on the Franchise modifications pursuant to such negotiations, then the City shall amend this Franchise to include the modifications. If the City and Grantee fail to reach agreement in such negotiations, Grantee may, at its option, elect to replace this Franchise by opting into the franchise or other similar lawful authorization that the City grants to another Wireline MVPD (with the understanding that Grantee may use its current system design and technology infrastructure to meet any requirements of the new franchise), so as to ensure that the regulatory and financial burdens on each entity are equivalent. If Grantee so elects, the City shall immediately commence proceedings to replace this Franchise with the franchise issued to the other Wireline MVPD. Notwithstanding anything contained in this section to the contrary, the City shall not be obligated to amend or replace this Franchise unless the new entrant makes Cable Services or similar downstream Video programming service available for purchase by Subscribers or customers under its franchise agreement with or similar authorization from the City.

(d) In the event the City disputes that the Material Obligations are different, Grantee may bring an action in federal or state court for a determination as to whether the Material Obligations are different and as to what franchise amendments would be necessary to remedy the disparity. Alternatively, Grantee may notify the City that it elects to immediately commence the renewal process under 47 U.S.C. § 546 and to have the remaining term of this Franchise shortened to not more than thirty (30) months.

(e) Nothing in this Section 17.18 is intended to alter the rights or obligations of either party under Applicable Law, and it shall only apply to the extent permitted under Applicable Law and FCC orders. In no event will the City be required to refund or to offset against future amounts due the value of benefits already received.

(f) To the extent the City has legal authority to grant a franchise or similar authorization to a wireless provider of Cable Service, the competitive equity rights provided by this section shall apply with respect to Material Obligations imposed in such franchise or other similar agreement. In the event of a dispute regarding the City's legal authority, Grantee shall have the burden to demonstrate that such authority exists or does not exist.

**17.19 In-Kind Cable-Related Contributions.** In the event the FCC Section 621 Order (*Third Report and Order in MB Docket No. 05-311 adopted by the FCC on August 1, 2019*) (herein “621 Order”) is stayed or overturned in whole or in part by action of the FCC or through judicial review, and franchise-mandated Complimentary Services to public buildings as set forth in Section 6.5 herein and the PEG transport as provided in Section 7.9(a) and (c) herein are no longer considered to be “Franchise Fees” under 47 U.S.C. §542, then for the remaining Franchise term, Grantee shall provide, free of charge, complimentary Basic Cable Service to the Complimentary Service locations listed in Exhibit A and the PEG transport as provided in Section 7.9(a) and (c).

**SECTION 18 Effective Date**

This ordinance shall take effect May 14, 2021.

|                             |                |
|-----------------------------|----------------|
| First Reading               | April 5, 2021  |
| Second Reading              | April 19, 2021 |
| Date of publication         | April 29, 2021 |
| Date ordinance takes effect | May 14, 2021   |

Reviewed for administration:

Adopted by the City Council April 19, 2021

\_\_\_\_\_  
Thomas K. Harmening, city manager

\_\_\_\_\_  
Jake Spano, mayor

Attest:

Approved as to form and execution:

\_\_\_\_\_  
Melissa Kennedy, city clerk

\_\_\_\_\_  
Soren Mattick, city attorney

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

Comcast of Minnesota LLC

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

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

Its: \_\_\_\_\_

**EXHIBIT A**  
**LIST OF FREE SERVICE TO BUILDINGS**

|     | <b>Building Name</b>                                     | <b>Address</b>            |                          |
|-----|--|---------------------------|--------------------------|
| 1.  | St. Louis Park City Hall                                 | 5005 Minnetonka Boulevard | St. Louis Park, MN 55416 |
| 2.  | St. Louis Park Recreation Center and Wolfe Park Pavilion | 3700 Monterey Drive       | St. Louis Park, MN 55416 |
| 3.  | Municipal Service Center                                 | 7305 Oxford Street        | St. Louis Park, MN 55426 |
| 4.  | Fire Station One   | 3750 Wooddale Avenue      | St. Louis Park, MN 55416 |
| 5.  | Fire Station Two   | 2262 Louisiana Avenue     | St. Louis Park, MN 55426 |
| 6.  | Westwood Hills Nature Center                             | 8300 W. Franklin Avenue   | St. Louis Park, MN 55426 |
| 7.  | Police Station   | 3015 Raleigh Avenue       | St. Louis Park, MN 55416 |
| 8.  | The Shops at West End Police Substation*                 | 1623 West End Boulevard   | St. Louis Park, MN 55416 |
| 9.  | Excelsior & Grand Police Substation                      | 4717 Park Commons Drive   | St. Louis Park, MN 55416 |
| 10. | The Shoppes at Knollwood Police Substation*              | 8332 Highway 7            | St. Louis Park, MN 55426 |
|     | <b>ISD 283:</b>  |                           |                          |
| 11. | Lenox Community Center                                   | 6715 Minnetonka Blvd      | St. Louis Park, MN 55426 |
| 12. | Aquila Elementary School                                 | 8500 West 31st Street     | St. Louis Park, MN 55426 |
| 13. | Peter Hobart Elementary School                           | 6500 West 26th Street     | St. Louis Park, MN 55416 |
| 14. | Susan Lindgren Elementary School                         | 4801 West 41st Street     | St. Louis Park, MN 55416 |
| 15. | Park Spanish Immersion School                            | 9400 Cedar Lake Road      | St. Louis Park, MN 55426 |
| 16. | St. Louis Park Middle School                             | 2025 Texas Avenue South   | St. Louis Park, MN 55426 |
| 17. | St. Louis Park High School                               | 6425 West 33rd Street     | St. Louis Park, MN 55416 |
| 18. | Central Community Center                                 | 6300 Walker Street        | St. Louis Park, MN 55416 |

\* Following the outcome of the appeal of the 621 Order consistent with Section 17.19 of this Franchise, and upon the City's written request, Grantee shall, if permitted by Applicable Law, provide Complimentary Service to locations #8 and #10 above.



**EXHIBIT B**  
**PEG TRANSPORT**

|    | <b>Building Name</b>                          | <b>Address</b>                    |
|----|---|-----------------------------------|
| 1. | City Hall                                     | 5005 Minnetonka Boulevard         |
| 2. | St. Louis Park High School                    | 6425 West 33 <sup>rd</sup> Street |
| 3. | St. Louis Park High School Football Field     | 6525 West Lake Street             |
| 4. | Rec Center, Amphitheatre and the Banquet Room | 3700 Monterey Drive               |

**EXHIBIT C**  
**FRANCHISE FEE PAYMENT WORKSHEET**  
*TRADE SECRET – CONFIDENTIAL*

\*\*\*CONFIDENTIAL\*\*\*

# COMCAST

System Name: Comcast of Minnesota, Inc.  
 Email: Prasant\_Nadella@cable.comcast.com  
 Phone: 610-665-2579

Vendor ID: XXXXX  
 Contract Name: St Louis Park  
 Statement Period: Jan - Mar, 20XX  
 Payment Amount: \$X XXXXXX  
 Statement: XXXXXX XXXX  
 Number: CUID: XXXX  
 System ID: XXXX

This statement represents your payment for the period listed above.

| Revenue Category                | Amount    |
|---------------------------------|-----------|
| Expanded Basic Video Service    | \$        |
| Listed Basic Video Service      | \$        |
| Digital Video Service           | \$        |
| Pay                             | \$        |
| PPV / VOD                       | \$        |
| Video Equipment                 | \$        |
| Digital Video Equipment         | \$        |
| Video Installation / Activation | \$        |
| Franchise Fees                  | \$        |
| Guide                           | \$        |
| Other                           | \$        |
| Late Fees                       | \$        |
| Write-offs / Recoveries         | \$        |
| Ad Sales                        | \$        |
| Home Shopping Commissions       | \$        |
| <b>Total</b>                    | <b>\$</b> |
| Franchise Fee %                 | %         |
| Franchise Fee                   | \$        |

PEG Fee Factor: 2%

PEG Fee

**Nothing in this Franchise Fee Payment Worksheet shall serve to modify the definition of "Gross Revenues" set forth in the Franchise.**

**EXHIBIT D****Summary of Ordinance for Publication**

**An ordinance granting a franchise to Comcast of Minnesota, LLC to construct, operate and maintain a cable system in the city of St. Louis Park, Minnesota setting forth conditions accompanying the grant of the franchise; providing for regulation and use of the system and the public rights-of-way; and prescribing penalties for the violation of the provisions herein**

On \_\_\_\_\_, 2021, the City of St. Louis Park, Minnesota (“City”) adopted an ordinance granting a Cable Television Franchise to Comcast of Minnesota, LLC (“Comcast”). The Franchise serves two (2) purposes. First, it is intended to provide for and specify the means to attain the best possible cable service for the public by providing requirements for cable with respect to technical standards, customer service obligations, and related matters. Second, it grants a non-exclusive cable television franchise to Comcast, to operate, construct and maintain a cable system within the City and contains specific requirements for Comcast to do so.

The franchise includes the following: 1) a franchise fee of five percent (5%) of Comcast’s annual gross revenues; 2) a franchise term of ten (10) years; 3) a list of schools and public buildings entitled to receive complimentary cable service; 4) dedicated channel capacity for public, education and government (“PEG”) access programming; 5) customer service standards regarding Comcast’s cable services; and 6) a performance bond to enforce Comcast’s compliance with the franchise.

It is hereby determined that publication of this title and summary will clearly inform the public of the intent and effect of Ordinance No. \_\_\_\_\_. A copy of the entire ordinance shall be posted at the St. Louis Park City Hall.

It is hereby directed that only the above title and summary of Ordinance No. \_\_\_\_ be published, conforming to Minnesota Statutes Section 331A.01, with the following:

**NOTICE**

Persons interested in reviewing a complete copy of the Ordinance may do so at the St. Louis Park City Hall at 5005 Minnetonka Boulevard, St. Louis Park, MN 55416 during the hours of 7:30 a.m. and 4:30 p.m., Monday through Friday.

|                     | <u>Yes</u> | <u>No</u> |
|---------------------|------------|-----------|
| Mayor _____         | _____      | _____     |
| Councilmember _____ | _____      | _____     |
| Councilmember _____ | _____      | _____     |
| Councilmember _____ | _____      | _____     |
| Councilmember _____ | _____      | _____     |
| Councilmember _____ | _____      | _____     |
| Councilmember _____ | _____      | _____     |

Reviewed for administration:

Adopted by the City Council (insert date)

\_\_\_\_\_  
Thomas K. Harmening, city manager

\_\_\_\_\_  
Jake Spano, mayor

Attest:

Approved as to form and execution:

\_\_\_\_\_  
Melissa Kennedy, city clerk

\_\_\_\_\_  
Soren Mattick, city attorney