

Chapter 28

TELECOMMUNICATIONS*

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*Charter reference(s)--Franchises, ch. 9.

Cross reference(s)--Businesses and licenses, ch. 8; streets, sidewalks and other public places, ch. 24; utilities, ch. 32; zoning, ch. 36.

State law reference(s)--Cable communications, M.S.A. ch. 238.

ARTICLE I. TIME WARNER/COMCAST CABLE FRANCHISE**Sec. 28-1. Cable franchises****Sec. 28-1-1. Granting Ordinance; Purposes.**

The City has determined that it is desirable and advantageous to the citizens of St. Louis Park to renew the existing cable television franchise with Time Warner Cable, Inc., the current franchisee, which the City anticipates will be subsequently transferring the renewed franchise to Cable Holdco II Inc., a wholly-owned subsidiary, through other subsidiaries, of Comcast Corporation ("Comcast"). In accordance with state and federal law requirements, the City has reviewed and found sufficient both entities technical ability, financial condition, and legal qualifications to operate in St. Louis Park and hereby determines that it is in the public interest to initially grant to Time Warner Cable a full and complete, nonexclusive franchise for a period of fifteen years for the operation and maintenance of a cable television in St. Louis Park; provided, however, the franchise is subject to the terms and conditions set forth in this Franchise Ordinance. By separate resolution the City also has approved the transfer of this Franchise to Comcast.

Sec. 28-1-2. Short Title.

This Franchise Ordinance shall be known and may be cited as the "Cable Communications Franchise Ordinance," hereinafter "Franchise Ordinance", and it shall become a part of the ordinances and Legislative Code of the City of St. Louis Park.

Sec. 28-1-3. Definitions.

In this Franchise Ordinance the following terms, phrases, words and their derivations have the meanings given. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are always mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

Basic Service means the lowest priced tier of Cable Service that includes the retransmission local broadcast television signals; any public, educational, and governmental access programming required by this franchise to be provided to subscribers; any regional channel required by state law; and additional video programming signals or services added by cable operator.

CATV System is synonymous with "cable system" or "system" and means the Company's facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the Franchise Area.

Cable Service means (1) the one-way transmission to Subscribers of (a) video programming, or (b) other programming service, and (2) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

City means the City of St. Louis Park, Minnesota as it exists now and as its borders may from time to time be changed; including, without limitation, its officers, boards, commissions, elected officials, agents, attorneys, representatives, servants and employees.

Company means Time Warner Cable, Inc., the grantee of rights and obligations under this Franchise Ordinance, including, but not limited to, all subsidiaries, parents, or affiliate companies, associations or organizations having any rights, powers, privileges, duties, liabilities or obligations, under this Franchise Ordinance; and all owners, affiliates, successors, transferees, assignees, subcontractors, agents, employees and representatives.

FCC means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.

Franchise Ordinance means the incorporated terms of this Cable Communications Franchise Ordinance, governing the operation of a CATV System within and throughout the City of St. Louis Park.

Gross revenues means all revenues earned directly or indirectly by the Company, arising from or in connection with the provision of cable service in the City and consistent with local, state and federal law, including subscriber revenues (including pay TV), amounts collected as franchise fees, advertising income, home shopping programs and rentals of subscriber equipment, recorded as earned, in accordance with generally accepted accounting principles, in the area under jurisdiction of the City. The Company is not required to include revenues recorded as earned but which are deemed uncollectable, but it must include recoveries previously deemed uncollectable. This definition of gross revenues also does not include sales, excise or other taxes (other than franchise fees) collected by the Company on behalf of federal, state, county, city or other governmental unit, including FCC user fees. Funds collected by the Company to recover amounts paid to support public, educational and governmental access programming are also excluded from the definition of gross revenues.

Person means any person, firm, partnership, association, corporation, company, organization or entity.

Public Property means any real property owned by the City other than a highway, sidewalk, easement or dedication.

PEG means the public, educational and governmental access channels, equipment, programs or facilities, as the context dictates.

ISD 283 means Independent School District 283, located within the City of St. Louis Park.

State of the Art means equipment or facilities that:

- (1) Are readily available with reasonable delivery schedules from two or more sources of supply;

- (2) Have the capability to perform the intended functions demonstrated within communities with similar characteristic (including, but not necessarily limited to, population, density, Subscriber penetration, etc.) under actual operating conditions for purposes other than tests or experimentation; and
- (3) Are technically and economically feasible to implement. The term “State of the Art” shall not include equipment or facilities associated with or dedicated to the general public, educational or governmental access or telecommunication services.

Franchise Area means the present boundaries of the city of St. Louis Park, Minnesota, and shall include any additions thereto by annexation or other legal means.

Multichannel Video Programming Distributor means a person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, open video system operators, telephone companies, utility companies or a television receive-only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels Cable Service or substantially equivalent video programming.

Public Way, Right of Way or ROW means the space on, over, above and below any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses now or hereafter held by the City in the Franchise Area which shall entitle the Company to the use thereof for the purpose of installing, operating, repairing, and maintaining the CATV System.

Subscriber means any person who lawfully receives cable service from the Company and does not further distribute it.

Company's place of business means Company offices with financial records and maps, which shall be located in the Minneapolis/St. Paul metropolitan area.

Sec. 28-1-4. Application for a franchise.

Applications for a franchise, other than a franchise renewal pursuant to 47 U.S.C. §546, shall be filed with the City clerk in accordance with instructions promulgated by the City and shall contain the following information and provisions:

- (1) The name and business address of the applicant(s), date of application and signature of applicant(s) or appropriate corporate officer(s).
- (2) A description of the legal, technical and financial qualifications of the applicant(s).
- (3) Payment of the required filing fee.
- (4) Any applicant (including, specifically, the Company) shall reimburse City at the time the applicant accepts a franchise for all reasonable costs of the City in connection with the granting or renewal of a franchise, including costs for legal services and publication.
- (5) A general description of the applicant's proposed operation.
- (6) A statement of the applicant's proposed schedule of charges.
- (7) A statement detailing the corporate organization of the applicant, if any, including the names and addresses of its officers and directors and the division of shares between shareholders.

- (8) A statement describing all intra-company relationships of the applicant including parent, subsidiary or affiliated companies.

Sec. 28-1-5. Grant of franchise.

- (1) **Grant.** The Grantee shall have the nonexclusive right and privilege, subject to the provisions of this Franchise Ordinance to construct, erect, and maintain, in, upon, along, across, above, over and under the Rights of Way in the Franchise Area a CATV System and shall have the right and privilege to provide Cable Service. The System constructed and maintained by Grantee or its agents shall not interfere with other uses of the Rights of Way. Grantee shall make use of existing poles and other above and below facilities available to Grantee to the extent it is technically and economically feasible to do so. Nothing contained in this Franchise, shall be construed to give Grantee the authority to enter upon or work on private property in areas not encumbered with public easements without the permission of the property owner.
- (2) **Other Ordinances.** The Company agrees to comply with the terms of any generally applicable local ordinance. In the event of a conflict between any generally applicable ordinance and this Franchise Ordinance, the terms of this Franchise Ordinance shall control.
- (3) **State and Federal Law.** Notwithstanding anything in this Franchise Ordinance to the contrary, the City and Company shall conform to state laws and rules regarding cable communications and shall conform to federal laws and regulations regarding cable as they become effective.

Sec. 28-1-6. Franchise required.

After the effective date of this Franchise Ordinance, no person shall establish, operate or carry on the business of distributing to any person in the City any television signals, or radio signals or other intelligences, either analog or digital, by means of the Public Ways unless a franchise has first been obtained pursuant to the provisions of this Franchise Ordinance, and unless such franchise is in full force and effect. No person shall construct, install or maintain within any public street in the City, or within any other public property of the City, or within any privately owned area within the City which has not yet become a public street on any tentative subdivision map approved by the City; any equipment or facilities for distributing any television signals or radio signals or other intelligences either analog or digital unless a franchise authorizing the use of the streets or properties or areas has first been obtained pursuant to the provisions of this Franchise Ordinance, and unless such franchise is in full force and effect.

Sec. 28-1-7. Privileges and obligations under the franchise.

- (1) **Privileges Subordinate.** Any privilege claimed under a franchise in any street or other public property shall be subordinate to any lawful occupancy of the street or other public property by the City for City purposes or to any present or future improvements to the streets by the City, including without limitation sidewalks and roadway widening.

- (2) Consent to Transfer. The sale or transfer of the CATV System franchised under this Franchise Ordinance requires the prior written approval of the City. The parties to the sale or transfer shall make a written request to the City for its approval of the sale or transfer, and the request shall be processed by the City as required by Federal and state law.
- (3) Additional Franchises.
- A. The Company acknowledges and agrees that the City reserves the right to grant one (1) or more additional franchises or other similar lawful authorization to provide Cable Services or video programming services within the City; provided, however, that no such franchise or similar authorization shall contain material terms or conditions which are substantially more favorable or less burdensome to the competitive entity than the material terms and conditions herein.
- B. Notwithstanding any provision to the contrary, if a non-wireless Multichannel Video Programming Distributor legally authorized by state or federal law, makes available for purchase by Subscribers or customers, Cable Services or other video programming services within the Franchise Area without a franchise or other similar lawful authorization granted by the City, then Company or City shall have the right, upon one hundred eighty (180) days advance written notice to the other party, to terminate this Franchise; provided, however, that the City shall have no right to terminate the franchise pursuant to this section prior to 2016 in the event that Company had made or guarantees payment of the \$200,000.00 capital support payment due on December 31, 2011 pursuant to Section 28-1-14(6) of the Franchise Ordinance; provided, further, that the City shall have no right to terminate the franchise pursuant to this section at any time during the term in the event that Company had made or guarantees payment of the \$200,000.00 capital support payment due on December 31, 2011 and the \$100,000.00 payment due on December 31, 2016 pursuant to Section 28-1-14(6) of the Franchise Ordinance.

Nothing herein shall in any way limit or reduce Company's right to provide Cable Service in the City under applicable state or federal law nor the City's right to regulate Company's provision of Cable Services in the City.

- (4) Notices. All notices from Company to the City pursuant to this Franchise Ordinance shall be filed with the City Clerk and with the City Manager. Company shall maintain with the City, throughout the term of this Franchise Ordinance, an address for service of notices by mail. Company shall also maintain with the City, a local office and telephone number for the conduct of matters related to this Franchise Ordinance during normal business hours.

Sec. 28-1-8. Duration of franchise.

The term of the cable franchise granted by the City to the Company pursuant to this Franchise Ordinance shall be for a period of fifteen (15) years from and after the effective date. Nothing in this Section limits the City's or Company's rights to revoke or terminate the franchise granted by subsequent sections of this Franchise Ordinance.

Sec. 28-1-9. Franchise payment.

- (1) Payment to the City. The Company shall pay to the City an annual franchise fee in an amount equal to five percent (5%) of the annual gross revenues received by the Company for Cable Services within the City. Payment will be made to the City with an itemization of the gross revenues.
- (2) Method of Computation; Interest. Local sales taxes or other local taxes levied directly on a per-subscriber basis and collected by the Company shall be deducted from the local gross revenues before computation of sums due the City is made. Payments due the City under the terms of this Franchise Ordinance shall be computed and paid within 45 days of the end of each calendar quarter. The City shall be furnished a statement with each payment, certified as correct by the Company, reflecting the total amounts of gross revenues, and the above charges, deductions and computations, for the three (3) months' payment period covered by the payment.

In the event that any franchise fee payment is not made on or before the applicable date(s) specified, interest on the amount due (as determined from the gross operating receipts computed by an independent certified public accountant), shall accrue from the required payment date at the annual rate of twelve percent (12%).

- (3) Rights of Recomputation. No acceptance of any payment shall be construed as a release or as an accord and satisfaction of any claim the City may have for further or additional sums payable as a franchise fee under this Franchise Ordinance or for the performance of any other obligation. The period of limitation for recovery by the City of any franchise fee payable hereunder shall be three (3) years from the date on which payment by the Company is due to the City or for any period covered by an audit conducted pursuant to and in accordance with Section 28-1-19(4).
- (4) Late Payments. The City's acceptance of a late payment by the Company shall not be deemed a waiver of their right to enforce timely payments in the future.
- (5) In addition to Cable Service, the Grantee (either by itself or through one or more affiliates) may provide information and/or telecommunications services. For purposes of calculating the Franchise Fee when the Grantee packages or "bundles" Cable Services with other services not subject to franchise fees, the Grantee shall allocate revenues and compute the Franchise Fee due pursuant to this Franchise in accordance with EITF 00-21 or such subsequently issued generally accepted accounting principles ("GAAP") which amend or supersede EITF 00-21, or as otherwise required by applicable law. In the event EITF is amended or superseded, the Grantee will notify the City of such change in its required Franchise Fee report.

Sec. 28-1-10. Security for performance.

- (1) Performance Bond.
 - (a) Terms of Bond. As of the effective date of this Franchise Ordinance, the Company shall file with the City Clerk at its own expense, and at all times thereafter maintain in full force and effect for the term of this Franchise

Ordinance or any renewal, running to the City, a faithful performance bond in the amount of \$50,000.00. The bond shall be issued by a responsible company licensed to do business in the State of Minnesota, renewable annually and conditioned upon the faithful performance by the Company of all the terms and conditions of this Franchise Ordinance. This performance bond shall contain the further condition that in the event Company shall fail to comply with any law, ordinance or regulation governing the Franchise Ordinance, any such failure be deemed material, then the principal and surety of the bond shall be jointly and severally liable for any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of the Company up to the full amount of the bond.

This condition shall be a continuing obligation for the duration of the Franchise Ordinance and any renewal or extension and until the Company has liquidated all of its obligations with the City that may arise from the Company's acceptance of this Franchise Ordinance or from Company's exercise of any privilege or right granted by this Franchise Ordinance.

Notwithstanding the above provisions of this subsection, the Council may in its sole discretion waive the bond or reduce the required amount after five (5) years of operation of a CATV System under the Franchise Ordinance by the Company if the operation, in the sole opinion of the City, has been satisfactory.

The bond(s) should be subject to the approval of the City and shall contain the following endorsement:

It is hereby understood and agreed that this bond may not be cancelled until sixty (60) days after receipt by the City (by filing with the City Clerk), by registered mail return receipt requested, of a written notice of intent to cancel, intent not to renew, or material change in the bond.

- (b) Delays in Performance. The bond(s) required in this subsection shall provide that with fifteen (15) days' prior written notice to the Company, the City may recover against the surety the sums provided for failure to complete construction in accordance with any provisions of this Franchise Ordinance.
- (2) Letter of Credit.
- (a) Within ten (10) days after the adoption of this Franchise Ordinance, Company shall deposit with the City an effective irrevocable Letter of Credit from a local financial institution (and maintain at all times through the term of this Franchise Ordinance), in the amount of Twenty Thousand Dollars (\$20,000.00). The form, manner and content of the Letter of Credit shall be subject to the approval by the City Manager, which approval shall not be unreasonably withheld. The Letter of Credit shall be used to insure the faithful performance by Company of all the provisions of this Franchise Ordinance and compliance with all orders, permits and directions of City lawfully imposed on Company and the payment by Company of any claims, liens and taxes due City which arise by reason of the construction, rebuild, upgrade, operation or maintenance of the CATV System. City reserves the right, in its sole discretion, to reduce the required amount of the Letter of Credit.
 - (b) If Company fails to pay to City any taxes due and unpaid or fails to repay to City, any penalties, damages, costs or expenses for which the Company is required to indemnify the City under this Franchise Ordinance or is deemed,

pursuant to the procedures required under Section 28-1-21 hereof, to comply with any provision of the Franchise Ordinance which City reasonably determines can be remedied by an expenditure of the security, City may immediately request and receive payment of the amount due and owing (with interest and any penalties) from the financial institution holding the Letter of Credit. Upon request for such payment, City shall notify the Company of the amount and date of the payment.

- (c) Whenever the City shall receive payment of any amount against the Letter of Credit, the Company shall pay to or deposit with the financial institution holding the Letter of Credit an amount sufficient to replenish the Letter of Credit to its full value of Twenty Thousand Dollars (\$20,000.00) within ten (10) days after the Company has been notified of the City's request for payment. The City Manager shall be furnished with written proof of replenishment not later than twenty-four (24) hours after it is accomplished.
- (d) The Letter of Credit shall contain the following endorsement:

It is hereby understood and agreed that this Letter of Credit may not be cancelled by the financial institution nor the intention not to renew be stated until thirty (30) days after receipt by the City, by registered mail, of a written notice of such intention to cancel or not to renew.

- (3) Rights Reserved to City. The rights reserved by the City with respect to the bond(s) and Letter of Credit are in addition to all other rights and remedies the City may have under this Franchise Ordinance or any other law.

Sec. 28-1-11. Liability insurance and indemnification.

- (1) Liability Insurance.

- (a) At all times during the term of the Franchise Ordinance, Company shall maintain and (by its acceptance of a franchise under this Franchise Ordinance) specifically agrees that it will maintain in full force and effect, and at its own cost and expense comprehensive general liability insurance insuring the City and the Company from claims which may arise from Company's operations under this Franchise. The insurance must provide for at least \$4 million in coverage for personal injury or death from any occurrence. The policy or policies shall afford the same limits of liability as set out above for liability assumed under contract. The policy or policies shall name the City as an additional insured and provide that no other insurance maintained by the City will be called upon to contribute to a loss covered under that policy. All insurance policies maintained pursuant to this Franchise Ordinance shall contain the following endorsement: It is understood and agreed that this insurance policy may not be cancelled nor the intention not to renew be stated until sixty (60) days after receipt by the City, by registered mail, of written notice of such intention to cancel or not to renew.

- (2) Indemnification.

- (a) The Company shall indemnify and hold harmless the City from any suit, claim or demand whatsoever which may be asserted or recovered against it based upon or arising out of Company's construction, maintenance, or operation of the system

or any part thereof; provided, that such suit, claim, or demand is not based upon the City's own intentional or negligent conduct. The City agrees to immediately notify Company, in writing and within forty-eight hours (unless notification within forty-eight hours would be unreasonable due to extraordinary circumstances) of any claim or suit against the City for which Company may be required to indemnify the City. In the event Company is required to defend the City in connection with this section, the City agrees to tender control of its defense to Company and Company shall have the right to select defense counsel. The City agrees to cooperate in its own defense. This section does not apply to claims brought against the City pertaining to the granting of this Franchise Ordinance.

- (b) Reserved.
- (c) City reserves the right, at its own expense, to participate in the defense of any claim identified above either through intervention or otherwise.
- (d) The City is in no manner or means waiving any governmental immunity or limitation of liability it may enjoy or any immunity or limitation of liability for its agents, officials, servants, attorneys, representatives and/or employees.
- (e) The Company shall make no settlement in any matter identified above without the City's written consent, which shall not be unreasonably withheld. Failure to inform the City of settlement shall constitute a breach of this Franchise Ordinance and the City may seek any redress available to it against the Company whether set forth in this Franchise Ordinance or under any other municipal, state or federal laws.
- (f) Reserved.
- (g) The City's exercise of or failure to exercise any rights pursuant to any Section of this Franchise Ordinance shall not affect in any way the right of City subsequently to exercise any such rights or any other right of City under this Franchise Ordinance or any other ordinance, rule, regulation or law.

Sec. 28-1-12. System facilities; capabilities.

- (1) Business Office. The Company shall maintain a full service office at a location convenient to the public, it being understood and agreed that any location within 10 miles of the City shall be deemed convenient to the public. At such time as Company ceases to maintain such an office in the City, the Company shall provide for the convenience of its customers drop boxes for payments and equipment at up to two locations to be determined by mutual agreement of the parties; provided, however, that the City agrees to provide locations on City-owned property at which such drop boxes may be located. Equipment exchanges and other customer service needs may also be addressed through Company's direct service offerings.
- (2) Studio Facilities; Personnel. For the lesser of one year or such time as the City has established replacement studio facilities, the Company shall continue to make available its existing studio facilities within the City. During this period, the studio shall continue to be equipped with sufficient equipment and personnel to ensure its present level of functionality. Company's studio shall be accessible to the public and operate at reasonable hours to accommodate the public.

- (3) Emergency Capability and Use. The City and the Company shall conform to federal laws and regulations as they become effective, including 47 CFR Parts 11, 21, 63 and 76 regarding emergency alert system requirements.

Sec. 28-1-13. Construction and technical standards.

- (1) Compliance with Construction and Technical Standards. Company shall construct, install, operate and maintain its system in a manner consistent with all laws, ordinances, construction standards, governmental requirements and FCC technical standards.
- (2) Performance Tests and Certification.
 - (a) The Company shall be responsible for insuring that the CATV System is designed, installed and operated in a manner which fully complies with the technical standards of this Franchise Ordinance.
 - (b) The Company shall conduct complete performance tests of the CATV System as required by FCC regulations. The Company shall provide the City 30 days advance notice of any test and, upon request, with a written report of the results of such FCC technical tests.
 - (c) Company shall bear all of the costs of technical standards testing required under FCC rules.

Sec. 28-1-14. PEG programming and Leased Access channels.

- (1) Specially Designated Public, Educational, Governmental (PEG) and Leased Access Channels. Company shall make available for access programming at least five (5) downstream video channels on the Subscriber Network for public, educational and governmental access. Two of the channels shall be specially designated for noncommercial public access; one channel shall be dedicated to local non-commercial municipally-produced community programming; one channel shall be specially designated for noncommercial access by local educational authorities; and one channel shall be specially designated for noncommercial access for local government use. In addition, Company shall make available leased access channels pursuant to the Cable Communications Policy Act of 1984.

The VHF spectrum shall be used for a least one (1) of the specially designated noncommercial public access channels required in this Section. Company shall provide reception on these channels to each of the subscribers who receive Basic Service. Company shall ensure that its delivery and transmission of PEG channels and programming shall be without material alteration or degradation of picture or sound content and will be of a quality consistent with FCC technical standards. In the event the Company changes the access channel designations (numbers), the Company shall, to the extent possible, provide sixty (60) days prior written notice of such change(s) to the City. In addition, the Grantee shall provide reasonable notice of such change(s) to Subscribers via, for example, bill stuffers or a channel crawl.

- (2) Charges for Use of Public Access Channels. No charges shall be made for channel time or playback of prerecorded programming on at least one (1) of the specially designated noncommercial public access channels required by this Section, provided, however, that personnel, equipment, and production costs may be assessed for live studio presentations

exceeding five (5) minutes in length. Charges for such production costs and any fees or use of other public access channels shall be consistent with the goal of affording the public a low cost means of television access.

- (3) Access Channel Rules. The governmental access channel, municipally operated channel, and public access channels, shall be administered solely by the City. The local educational channels shall be administered solely by ISD 283. The leased access channel(s) shall be administered solely by the Company.
- (4) Reduction of Channel Capacity. If available channel capacity is reduced in the future or where demand for use does not warrant activation of all of the specially designated access channels required in this Section; public, educational, governmental and leased access channel programming may be combined on one or more cable channels. To the extent consistent with the City's rules and where time is available, access channels may also be used for other broadcast and nonbroadcast services, provided that such services are subject to immediate displacement and may be replaced by access channels if City determines, in its sole discretion, that there is demand to use the channel for its specially designated access purpose. Company shall, in any case, provide at least one (1) full channel on the VHF spectrum for shared access programming. Available channel capacity shall be reduced or a determination that demand for use does not warrant activation of all the specially designated access channels required by this Section shall be made only pursuant to the following procedure:
 - (a) Company will notify City of the proposed change;
 - (b) City shall make a determination following a process of review which takes into account such rules as may be established by City for this purpose and which affords notice and opportunity to be heard to all interested parties.
- (5) Video on Demand. The Company shall provide Video on Demand service (VOD) for government and community programming. The VOD service to be provided herein shall be limited to up to twenty (20) hours per month and, in addition to City-provided content, may include ISD 283 programming. The City will be solely responsible for determining programming priority and will be responsible for providing Company with good quality masters in a format determined through mutual agreement. A presentation form (stating program information, the City's acceptance of responsibility for content, "kill" dates, if applicable, and other matters) and content delivery method will be determined through mutual agreement of the parties.
- (6) Support Grant. Company shall pay to the City the amount of \$1.1 million dollars, which shall be used solely for PEG access purposes. This amount shall be in addition to any other required fee or payment, and shall be paid as follows:

\$800,000 on or before June 30, 2006
\$200,000 on or before December 31, 2011
\$100,000 on or before December 31, 2016
- (7) Transfer of Equipment. Company shall continue to meet the Local Origination requirement in its previous franchise with the City until December 30, 2006. On or before that date, Company shall transfer to City its current production van as presently equipped, subject to normal wear and tear.

Sec. 28-1-15. Interconnection/Service to government and school buildings.

- (1) Programming Origination Sites. Company agrees to operate and maintain existing direct connections and necessary equipment for the purposes of cablecasting programming on the subscriber network, as follows:
 - a) from ISD 283 High School headend to Company headend.
 - b) from ISD 283 football field grandstand to High School headend.
 - c) from City Hall control room racks to Company headend.
 - d) from Wolfe Park Veteran's Memorial Amphitheatre to City Hall control room racks.
 - e) from designated equipment area in nearby Rec Center to City Hall control room racks.

Company shall not be liable or responsible for any costs or expenses resulting from any City or High School loss of or damage to connections or equipment or any changes to the City or High School's wiring implemented by a party other than Company.

- (2) Service Provided. Company agrees to make available one free drop of the Subscriber Network, providing, at no charge, Basic Service to institutions listed on Exhibit A. Company shall provide, at no charge and upon City's request, two converters or other equipment required for converting the signal for analog display, if necessary, at each location (or institution).

Sec. 28-1-16. System Construction requirements.

- (1) Permit Application. Company shall be responsible for application costs and approval of all necessary permits required under the City's generally applicable ordinances pertaining to work in Public Ways.
- (2) Line Extension Policy.
 - (a) Upon the effective date of this Franchise Ordinance, the Company shall offer Cable Service within the Franchise Area. The Company shall extend the Cable System to any residences within the City requesting Cable Service provided there are at least thirty (30) homes per mile, or the equivalent thereof, of required new Cable System construction and the requesting residence is within 125 feet of the Cable System as extended.
 - (b) In those instances in which the cable that connects the ground block to the nearest feeder cable of the Cable System is in excess of 125 feet, the Company shall bear that portion of the cost of constructing the first 125 feet and the requesting Subscriber shall bear the remainder.
 - (c) The City recognizes that in some instances the Company may need the permission of private property owners to extend Service. If the Company is unable to obtain such permission on reasonable terms, the Company shall be under no obligation to extend Service.
 - (d) The Company agrees to extend Cable Service to any business in the Franchise Area provided costs are within a cost recovery model. The current threshold cost for extension borne by the Company is available by contacting the Company's Business Services Department.
- (3) City's Reservation of Rights. Neither the review of plans by the City nor the granting by City of any licenses, permits, certificates, authorizations, approvals, etc., shall be construed as a guarantee or warranty by the City of Company's CATV System. The

Company shall not assert the fact that the City has performed any prior review of its plans or exercised any ministerial function in granting licenses, permits, certificates, authorizations, approvals, etc., as a defense against its obligations to indemnify and hold the City harmless pursuant to Section 9-711(3).

Sec. 28-1-17. Fees, rates and charges.

- (1) To the extent authorized by law, the City reserves its rights to regulate rates and charges imposed by the Company (City received FCC Certification of Franchising Authority to Regulate Basic Cable Service Rates on 10-26-93).
- (2) Notice of Rate Change. Company shall notify the City and subscribers of changes in rates as and to the extent required by 47 C.F.R. §76.1603.

Sec. 28-1-18. Conditions of public property occupancy.

- (1) Approval of Proposed Construction. The Company shall first obtain the approval of the Director of Public Works before any construction is commenced on streets, alleys, sidewalks, driveways, public property or places of the City. Application for approval of construction shall be in a form specified by the Director of Public Works. The Company shall give the City reasonable written notice of proposed construction to allow coordination of all work between the City and the Company.
- (2) Excavation Permits. Company shall not open or disturb the surface of a street, alley, sidewalk, driveway or public property for any purpose without first having obtained a permit to do so in the manner provided by ordinance. Company may apply for a single permit for all excavation. The amount charged by City to Company for such permit shall be fair and reasonable.
- (3) Changes Required by Public Improvements. Whenever the City undertakes any public improvement which affects CATV system facilities, it shall direct the Company to remove or relocate such equipment from the area of public improvement, at Company's expense. Specifically, Company shall, at its expense, protect, support, temporarily disconnect, relocate in or remove from a street, alley, sidewalk, driveway, or public property or place any property of the Company when required by the Director of Public Works by reason of traffic conditions, public safety, street vacation, street construction, change or establishment of street grade, installation or improvement of sewers, drains, water pipes, power lines, signal lines, tracks or any other type of structure, improvement or alteration of public property. If this public improvement also requires public utilities to remove or relocate their equipment and the City reimburses the utilities for their expenses incurred in the removal or relocation, the City shall reimburse the Company on the same terms and conditions it reimburses the utilities. If the utilities are reimbursed by some source other than the City, then City shall not be required to reimburse the Company for its expenses but will provide the Company with reasonable assistance in obtaining such reimbursement.
- (4) Interference With or Hazard to Persons and Improvements. The Company's CATV System, including all wires, conduits, cables and other property and facilities, shall be located, constructed, installed and maintained so as not to endanger or unnecessarily interfere with the lives of persons or with the usual and customary trade, traffic and

travel upon the streets, alleys, sidewalks, driveways or public property and places of the City. The Company shall keep and maintain all of its property in good condition, order and repair and make it available for inspection at any reasonable time and upon reasonable notice. The City shall have the right to inspect and examine property located in the Public Way that is owned or used, in part or in whole, by the Company. Company shall not place poles or other equipment where they will interfere with the rights or reasonable convenience of adjoining property owners, or with any gas, electric, or telephone fixtures or with any water hydrants or mains. All poles or other fixtures placed in a street shall be placed in the right-of-way between the roadway and private property as specified by the Director of Public Works.

- (5) Method of Installation. All wires, cables, amplifiers and other property shall be constructed and installed in an orderly and workmanlike manner. All cables and wires shall be installed parallel with existing telephone and electric wires whenever possible. Multiple cable configurations shall be arranged in parallel and bundled, in compliance with engineering and safety considerations and standards. Any portion of a CATV System that is installed in a park or publicly owned open space area shall be installed underground in a manner approved by the City. All installations shall be underground in those areas of the City where public utilities providing both telephone or electric utility facilities are underground at the time of installation. In areas where either telephone and electric utility facilities are above ground at the time of installation, the Company may install its service above ground provided that at such time as all those facilities are required to be placed underground, the Company shall likewise place its facilities underground without additional cost to the residents of the City except as provided under City ordinance.
- (6) Protection of Facilities. Nothing contained in this Franchise Ordinance shall relieve any person, company or corporation from liability arising out of the failure to exercise reasonable care to avoid injuring Company's facilities while performing any work connected with grading, regrading, or changing the line of any street or public place or with the construction or reconstruction of any utility facility, sewer or water system.
- (7) Notice of City Improvements. The City shall give the Company reasonable notice of plans for street improvements where paving or resurfacing of a permanent nature is involved. The notice shall contain the nature and character of the improvements, the streets upon which the improvements are to be made, the extent of the improvements and the date of commencement of work. Notice shall be given a sufficient length of time in advance to permit Company to make any additions, alterations, or repairs to its facilities deemed necessary, considering seasonal working conditions in advance of the actual commencement of work.
- (8) Compliance with Codes. All construction, installation, maintenance and operation of CATV Systems or facilities shall comply with the provisions of the National Electrical Safety Code as prepared by the National Bureau of Standards, the National Electrical Code of the National Board of Fire Underwriters, the Bell Telephone System Code of Pole Line construction, standards issued by the FCC or other federal or state regulatory agencies, and local zoning regulations. Every CATV System installed, constructed, maintained or operated in the City shall be designed, constructed, installed, maintained and operated as not to endanger or interfere with the safety of persons or property in the City.

- (9) **Moving Wires.** Upon request made at least five (5) days in advance by a holder of a building moving permit for the purpose of moving buildings, the Company shall temporarily raise, lower, or remove its wires. The holder of the building moving permit shall pay the reasonable cost of the requested service and may be required to pay that amount in advance.
- (10) **Trimming Trees.** All trimming shall be done under the supervision and direction of the City and at the expense of the Company. The Company shall not remove any tree within any public place without the prior consent of the City. The Company shall be allowed to trim trees upon and overhanging streets, alleys, sidewalks, driveways and public grounds and places of the City to prevent the branches of the trees from coming in contact with the wires and cables of Company. Regardless of who performs the work, the Company shall be responsible and shall defend and hold City harmless for any and all damages to any tree or surrounding land as a result of the trimming or removal.
- (11) **Restoration to Prior Condition.** In case of any disturbance of pavement, sidewalk, driveway, foundation or other surfacing, the Company shall, at its own cost and expense and in a manner approved by the City, replace and restore all paving, sidewalk, driveway, foundation or surface of any street or alley disturbed, in as good condition as before the work was commenced and in accordance with standards for such work set by the City. If, upon reasonable written notice, the Company fails promptly to restore any street or public place in accordance with this provision, the City shall have the right to put such street or public place back into good condition at the expense of the Company and the Company shall, upon demand, pay to the City and the cost of such work done or performed by the City.
- (12) **Interference With Reception.** Company shall not allow its cable or other operations to interfere with the broadcast reception of persons not served by Company.
- (13) **Record of Equipment and Facilities to be Maintained.** The Company shall at all times make and keep at its business office complete and accurate plans and records showing the exact location of all CATV System equipment and facilities installed or in use in the City and make available such maps and records for the City's inspection promptly upon the City's reasonable request.

Sec. 28-1-19. Operation of the franchise/consumer service.

- (1) **Consumer Service Policies.** The Company shall comply with applicable customer service standards set forth at 47 C.F.R. 76.309, or other applicable state or federal requirements. Nothing in the foregoing shall be construed as a waiver by the City of any rights it may have to adopt additional or modified consumer protection requirements to the extent authorized by federal or state law.
- (2) **Consumer Complaints.** The company shall designate a local contact person for City representatives to contact in case complaints about the company, its practices or services are received by City staff. The company is expected to normally resolve customer's complaints without City involvement, but when customer complaints are received by City staff and forwarded to the company contact, the Company shall resolve the customer complaint and notify City staff of the outcome.

The Company shall provide a copy of pertinent company customer service policies to the City upon request, for verification that company policies have been followed in complaints received by the City.

- (3) Repairs and Maintenance.
 - (a) Maintenance of the System. The Company shall install and maintain the CATV System so as to avoid unreasonable or repetitive interruptions in service to subscribers.
 - (b) Interruption of Service. Whenever it is necessary to interrupt service to make tests, repairs, adjustments or installations, the Company shall do so during a period of minimum subscriber use. Unless an interruption is unforeseen and immediately necessary, the Company shall give reasonable notice to the subscribers affected. All costs incurred in effecting such tests, repairs, adjustments or installations shall be borne by the Company unless otherwise provided by law, ordinance or regulation.
- (4) Reports, Books and Records of Company.
 - (a) City's Right to Audit. Not more than once every three (3) years, the City shall have reasonable access at mutually agreed-upon times to audit Company's accounting and financial records at Company's place of business upon reasonable notice as reasonably necessary to verify Company's compliance with its monetary obligations to the City under this Franchise Ordinance. Company shall have the right to observe any such audit proceedings. Such audit may not review records extending back further than three (3) years from the commencement of such audit.
 - (b) Report on Operations. Upon request, the Company shall prepare and furnish to the City at the time and in the form prescribed by the City Manager, such reports with respect to its Cable System operations, affairs, transactions or property in the City, as may be determined reasonably necessary to the City's regulation of the Cable System pursuant to this Franchise Ordinance.
- (5) Filing Communications with Regulatory Agencies. As required by applicable law and otherwise upon request, Company shall provide to City a copy of any petition, application or similar communication that is submitted by the Company to the FCC, or other federal or state regulatory commission or agency having jurisdiction in respect to any matter affecting CATV System operations within the City.
- (6) Reserved.
- (7) Rules of the Company. The Company may promulgate such rules, regulations, terms and conditions governing the conduct of its business as may be reasonably necessary to enable it to exercise its rights and perform its obligations under the Franchise Ordinance and to assure an uninterrupted service to any and all of its customers; except that such rules, regulations, terms and conditions shall not be in conflict with the provisions of this Franchise Ordinance, other ordinances of the City, or the laws of the State of Minnesota or the United States. Upon request, a current copy of any such rules, regulations, terms and conditions shall be filed with the City.
- (8) Service Contract. If a written service contract is used by a Company in its dealings with subscribers, the Company shall provide a copy of such contract to the City upon request.
- (9) Reserved.

- (10) Reserved.
- (11) Preferential or Discriminatory Practices Prohibited.
- (a) The Company shall establish and maintain an Equal Employment and Affirmative Action Program providing that no individual shall be discriminated against with respect to compensation, terms, conditions or other privileges or employment because of race, color, creed, religion, sex, national or ethnic origin, physical condition, age, affectional preference or marital status. The Company's Equal Employment and Affirmative Action Program shall be maintained on file with the City Manager and shall be in compliance with current and future policies established in the City's Affirmative Action Program, as well as with Section 635 of the Cable Act of 1984. The Company shall strictly adhere to the Equal Employment and Affirmative Action Program it files.
- (b) The Company shall comply with or exceed all federal, state and local laws and regulations relating to equal employment opportunity and non-discrimination.
- (12) Subscriber Privacy. At all times, Company shall abide by the subscriber privacy provisions in applicable federal and state laws including 47 U.S.C. §551.
- (13) Surveys. Company shall provide the City with the results any non-confidential, non-privileged survey of Subscribers in the City regarding Cable Service or the operation of the CATV System.
- (14) Periodic Review. The City may request a State-of-the-Art review at the fifth and tenth anniversaries of the granting of this Franchise. In conducting a State-of-the-Art review, the City shall undertake the following process:
- (a) The City and the Company shall undertake a review of the then existing Cable System. This review shall, at a minimum, take into account the following:
- (1) Characteristics of the existing System;
 - (2) The State-of-the-Art;
 - (3) Additional benefits provided to customers by the State-of-the-Art;
 - (4) The market place demand for the State-of-the-Art;
 - (5) The use of a need for additional PEG access channels; and
 - (6) The financial feasibility of the State-of-the-Art taking into account associated rate increases, and the premature retirement of assets.
- (b) The City shall hold a public hearing to enable the general public and Company to comment and to present evidence.
- (c) As a result of any review based on this section, the City and Company may enter into good faith negotiations to amend this Franchise as necessary to provide system improvements on a schedule that takes into account the impact on rates, recovery of costs, benefit to subscribers, and other factors agreed upon.
- (d) Notwithstanding anything to the contrary, the City may not undertake a State of the Art review at any time the Company is deemed subject to effective competition pursuant to then applicable state or federal law.

Sec. 28-1-20. Rights reserved; resolution of disputes.

- (1) No Impairment of Eminent Domain. Nothing herein shall be construed to contract away, modify or abridge, either for a term or in perpetuity, the City's rights to eminent domain, including any right of the City to acquire the property of the Company through the exercise of the right of eminent domain.

- (2) Administration of Franchise Ordinance. Subject to the control and direction of the Council, the City Manager of City, or City Manager's designee, shall be the designated administrator responsible for the continuing administration of the Franchise Ordinance.
- (3) Resolution of Disputes and Appeal Procedures. Prior to taking any enforcement action authorized by Section 28-1-21, the City shall contact the Company's designated representative and attempt to resolve the dispute.
- (4) City's Transfer of Functions. Any right or power conferred, or duly imposed upon any elected official, officer, employee, department, or board of the City shall be subject to transfer by the City to any other elected official, officer, employee, department or board to the extent permitted by applicable law.

Sec. 28-1-21. Enforcement.

- (1) Failure to Enforce Provisions. The Company shall not be excused from complying with any of the terms and conditions of the Franchise Ordinance by any failure of the City upon one or more occasions to insist upon or to seek compliance with any such terms or conditions.
- (2) Penalties. In addition to any other remedies provided in this Franchise Ordinance, penalties for violations of this Franchise Ordinance are set forth below. As a result of any acts or omissions by Company pursuant to the Franchise Ordinance, City may charge to and collect from the Company, by drawing on the Letter of Credit set forth in Section 28-1-10, or otherwise the following penalties:
 - (a) For failure to provide, after ten (10) days notice, data, documents, reports or information or to cooperate with the City during a renewal process, CATV System Evaluation and Renegotiation Session, or in the conduct of City's Franchise Ordinance enforcement and administration functions, the penalty shall be Fifty Dollars (\$50.00) per day.
 - (b) For failure to comply with any of the provisions of this Franchise Ordinance after ten (10) days notice, for which a penalty is not otherwise specifically provided, the penalty shall be Fifty Dollars (\$50.00) per day.
 - (c) For failure to test, analyze and report on the performance of the CATV System following a request by the City as set forth in this Franchise Ordinance and after ten (10) days notice, the penalty shall be Fifty Dollars (\$50.00) per day.
 - (d) For failure of Company to comply with the construction, operation or maintenance standards thirty (30) days following notice from the City, the penalty shall be Two Hundred Dollars (\$200.00) per day.
 - (e) For failure to comply with all conditions of City permits to disturb streets, fix streets, or other terms or conditions of City, the penalty shall be Fifty Dollars (\$50.00) per day.
- (3) Notice of Violation. In the event that the City believes that the Company has not complied with any material term of the Franchise Ordinance, the City shall informally discuss the matter with Company. If these discussions do not lead to resolution of the problem, the City shall notify the Company in writing of the exact nature of such alleged noncompliance.
- (4) The Company's Right to Cure or Respond. The Company shall have thirty (30) days from receipt of the notice described in subsection (4) to: (a) respond to the City,

contesting the assertion of such noncompliance, or (b) cure such default, or (c) in the event that, by the nature of such default, it cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected date that they will be completed.

- (5) **Public Hearing.** In the event that the Company fails to respond to the notice described in subsection (3) pursuant to the procedures set forth in subsection (4), or in the event that the alleged default is not remedied within thirty (30) days or the date projected pursuant to (3)(c) above, if it intends to continue its investigation into the default, then the City shall schedule a public hearing. The City shall provide the Company at least ten (10) days prior written notice of such hearing, which specifies the time, place and purpose of such hearing, and provide the Company the opportunity to be heard. Within thirty (30) days of the end of such hearing, the City shall issue a written decision regarding whether a material default of the Franchise Ordinance has been established by clear and convincing evidence in the record.
- (6) **Enforcement.** Subject to applicable federal and state law, in the event the City, after the hearing set forth in subsection (5), determines that the Company is in material default of any provision of the Franchise Ordinance, the City may:
 - (a) Impose the penalties specified above and if prompt payment of the penalties is not made by the company, the City may draw on the Letter of Credit.
 - (b) Commence an action at law for monetary damages or seek other equitable relief; or
 - (c) In the case of repeated or ongoing substantial non-compliance with a material term or terms of the Franchise Ordinance, seek to revoke the grant of the franchise pursuant to this Franchise Ordinance in accordance with subsection (7).
- (7) **Revocation.** Should the City seek to revoke the grant of the franchise after following the procedures set forth in subsections (3) through (6) above, the City shall give written notice to the Company of its intent. The notice shall set forth the exact nature of the repeated or ongoing substantial noncompliance with a material term or terms of the franchise. The Company shall have ninety (90) days from such notice to object in writing and to state its reasons for such objection. In the event the City has not received a satisfactory response from the Company, it may then seek termination of the franchise at a public hearing before the City Council. The City shall cause to be served upon the Company, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the franchise.

At the designated hearing, Company shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce relevant evidence, to require the production of evidence, to compel the relevant testimony of the officials, agents, employees or consultants of the City, to compel the testimony of other persons as permitted by law, and to question witnesses. A complete verbatim record and transcript shall be made of such hearing.

Following the hearing, the City Council shall determine whether or not the franchise shall be revoked. If the City Council determines that the franchise shall be revoked, the City Council shall promptly provide Company with its decision in writing. The Company may appeal such determination of the City Council to an appropriate court which shall have the power to review the decision of the City Council *de novo*. Company shall be entitled to such relief as the court finds appropriate.

- (8) Force Majeure. The Company shall not be held in default under, or in noncompliance with, the provisions of the Franchise Ordinance, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Company to anticipate and control. This provision includes work delays caused by waiting for utility providers to service or monitor their utility poles to which the Company's CATV System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

Furthermore, the parties hereby agree that it is not the City's intention to subject the Company to penalties, fines, forfeitures or revocation of the Franchise Ordinance for violations of the Franchise Ordinance where the violation was a good faith error that resulted in no or minimal negative impact on the Subscribers within the Franchise Area.

Sec. 28-1-22. Renewal.

The process for renewing this franchise shall be as provided under 47 U.S.C. § 546 and other applicable federal and state law..

Sec. 28-1-23. Removal after termination or revocation.

- (1) At the expiration of the term for which this Franchise Ordinance is granted, or upon its revocation or termination, as provided for herein, and final determination of non-renewal, City shall have the right to require Company to remove, at Company's expense, all or any portion of the CATV System from all streets and public property within City. In so removing the CATV System, Company shall refill and compact at its own expense any excavation that shall be made by it and shall leave all streets and public property in as good a condition as that prevailing prior to Company's removal of the CATV System, and without affecting, altering or disturbing in any way electric telephone or other utility cable, wires or attachments. City shall have the right to inspect and approve the condition of such streets and public property after removal. The Letter of Credit, Bonds, Insurance, Indemnity and Penalty provisions of the Franchise Ordinance shall remain in full force and effect during the entire term of removal.
- (2) If Company 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 is given, or if Company has failed to complete such removal within one year after written notice of City's demand for removal is given, City shall have the right to exercise any of the following options:
- (a) Declare all right, title and interest to the CATV System to be in City with all rights of ownership including, but not limited to, the right to operate the CATV System or to transfer the CATV System to another for operation.
 - (b) Declare the CATV System abandoned and cause the CATV System or such part thereof, as City shall designate, to be removed at the expense of the Company. The cost of said removal shall be recoverable from the Letter of Credit, Bonds, Insurance, Indemnification and Penalties provided for in this Franchise Ordinance, or from Company directly as liquidated damages.

Sec. 28-1-24. Expiration or revocation of franchise.

- (1) **Expiration; Extended Operation.** Upon the expiration of a Franchise Ordinance, the City may by resolution direct the Company to operate the Franchise Ordinance for an extended period of not to exceed six (6) months after the date of expiration. The Company agrees to comply with such a direction. All provisions of the Franchise Ordinance shall continue to apply to operations during an extension period. The City shall serve written notice at the Company's business office of intent to extend under this Section at least thirty (30) days prior to expiration. Nothing in the foregoing affects Company's rights to a franchise renewal under 47 U.S.C. §546.
- (2) **Injunctive Relief.** Pending final disposition of proceedings to revoke a Franchise Ordinance, or during a period of extension of a Franchise Ordinance after expiration, the City may obtain injunctive relief to obtain compliance with the provisions of the Franchise Ordinance and maintain the continuity of service to subscribers. Such relief shall be in addition to and not in lieu of other remedies available to the City. If the City prevails, the costs shall be borne by Company including attorneys' fees, costs and disbursements.
- (3) **Right of City to Purchase; Disposition of Facilities.** Upon expiration of the terms of the Franchise Ordinance, or upon a revocation or termination of this Franchise Ordinance, or if renewal of this Franchise Ordinance is denied, the City shall have the right to acquire the CATV System. Any such acquisition shall be at fair market value, determined on the basis of the CATV System as a going concern but with no value allocated to the Franchise Ordinance itself and shall be made pursuant to the provisions of Sections 9-725 (8) and (9) below. If the Franchise Ordinance held by Company is revoked or terminated for cause and the City determines to acquire ownership of the CATV System or effects a transfer of ownership of the CATV System to another person, any such acquisition or transfer shall be at an equitable price.
- (4) **Restoration of Property Upon Removal.** In removing its plants, structures and equipment, the Company shall refill at its own expense, any excavation that shall be made by it and shall leave all public ways and places in as good condition as that prevailing prior to the Company's removal of its equipment and appliances, without affecting the electric or telephone cables, wires or attachments. The Director of Public Works shall inspect and approve the condition of the public ways and public places and cables, wires, attachments and poles after removal. Liability insurance, indemnification and the security for performance required by this Franchise Ordinance shall continue in full force and effect during the period of removal.

The City shall have a right to all available remedies, including drawing on Company's Letter of Credit required by Section 28-1-10 of this Franchise Ordinance, in order to enforce the requirements of this Section.

Sec. 28-1-25. Abandonment.

Company shall not abandon the CATV System or any portion thereof without having first given three (3) months' written notice to City. Abandonment shall not occur unless first approved by the City after reasonable opportunity to review. Upon showing by Company of need for abandonment and an opportunity for the City to determine other areas for the continuity of service, the City shall evaluate any damage, claim or loss that may be applicable as a consequence of such abandonment. In order to accomplish this, the City shall conduct a public

hearing after providing reasonable notice to all affected persons as to the date, time and place of the hearing. Thereafter, before abandonment occurs, the City shall notify the Company of its determination and any person, including City, entitled to damages and the amount and basis therefore. Company shall not abandon the CATV System or any portion thereof without compensating City for damages resulting to it from the abandonment.

Sec. 28-1-26. Unauthorized connections.

It shall be unlawful for any person to make an unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise, with any part of the franchised CATV System within the City for the purpose of taking or receiving television signals, radio signals, pictures, programs, sound, or any other service provided by the Company.

Sec. 28-1-27. Severability.

If any section, subsection, sentence, paragraph, term, or provision of this Franchise Ordinance is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other section, subsection, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of this Franchise Ordinance.

Sec. 28-1-28. Work performed by others.

- (1) Company shall give notice to City specifying the names and addresses of any other entity, other than Company, which performs services pursuant to this Franchise Ordinance, provided, however, that all provisions of this Franchise Ordinance remain the responsibility of Company.
- (2) All provisions of this Franchise Ordinance shall apply to any subcontractor or others performing any work or services pursuant to the provisions of this Franchise Ordinance.

Sec. 28-1-29. Administration and advisory body.

- (1) Administrator. The City Manager or the City Manager's designee shall be responsible for the continuing administration of this Franchise Ordinance. The administrator may be changed by City from time to time by written notice given to Company.
- (2) Advisory Body. City may appoint an advisory body to monitor the performance of Company in executing the provisions of this Franchise Ordinance. The advisory body shall perform all functions required of it by the Council and applicable laws, ordinances, rules and regulations.
- (3) Delegation of Authority by City.
 - (a) City reserves the right to delegate and redelegate from time to time any of its rights or obligations under this Franchise Ordinance to any body or organization.
 - (b) Any delegation by City shall be effective upon written notice by City or Company of such delegation.
 - (c) Upon receipt of notice by Company of City's delegation, Company shall be bound by all terms and conditions of the delegation not in conflict with this Franchise Ordinance.

- (d) Any such delegation, revocation or redelegation, no matter how often made, shall not be deemed an amendment to this Franchise Ordinance or require any consent of Company.

Sec. 28-1-30. Time of acceptance; exhibits

- (1) Company shall have thirty (30) days from the last date of adoption of this Franchise Ordinance to accept this Franchise Ordinance in form and substance acceptable to City, unless the time for acceptance is extended by City. If this Franchise Ordinance is not accepted by Company in accordance with the terms of this Section, this franchise shall be null and void and without effect.
- (2) Upon acceptance of this Franchise Ordinance, Company and City shall be bound by all the terms and conditions contained herein. This Franchise Ordinance constitutes the entire agreement between the Company and the City and supersedes all other prior understandings and agreements oral or written, including the prior franchise ordinance between Company and the City, set forth at Sections 9-701 to 9-733 of the St. Louis Park Code of Ordinances, which is hereby repealed in its entirety. Any amendments to this Franchise Ordinance shall be mutually agreed to in writing by the parties.
- (3) All of the attached exhibits are a part of this Franchise Ordinance and each is specifically incorporated herein by reference. The exhibits are as follows:

Exhibit A: List of City and school district buildings at which Company has agreed to provide free service.

Exhibit B: Listing of equipment for the studio facilities and the mobile van provided for by Section 28-1-12 and Section 28-1-14.

Exhibit A

City of St. Louis Park:

City Hall
5005 Minnetonka Boulevard
St. Louis Park, MN 55416

St. Louis Park Recreation Center
and Wolfe Park Pavilion
3700 Monterey Drive
St. Louis Park, MN 55416

Municipal Service Center
7305 Oxford Street
St. Louis Park, MN 55426

Fire Station One
3750 Wooddale Avenue
St. Louis Park, MN 55416

Fire Station Two
2262 Louisiana Avenue
St. Louis Park, MN 55426

Pavek Museum of Broadcasting
3515 Raleigh Avenue
St. Louis Park, MN 55416 [Split estimate of \$7,569.00 = \$3,784.50]

City Utilities Office
3752 Wooddale Ave S
St. Louis Park, MN 55416

Westwood Hills Nature Center
8300 West Franklin Avenue
St. Louis Park, MN 55426

Police Station
3015 Raleigh Avenue
St. Louis Park, MN 55416

Meadowbrook Community Police Station
4072 Meadowbrook Lane
St. Louis Park, MN 55426

Excelsior/Grand Community Police Station
4717 Park Commons Drive
St. Louis Park, MN 55416

Texatonka Community
Police Station
8038 Minnetonka Blvd
St. Louis Park, MN 55426

ISD 283:

Lenox Community Center
6715 Minnetonka Blvd.
St. Louis Park, MN 55426

Eliot School Building
6800 Cedar Lake Road
St. Louis Park, MN 55426

Aquila Primary Center
8500 West 31st Street
St. Louis Park, MN 55426

Peter Hobart Primary Center
6500 West 26th Street
St. Louis Park, MN 55416

Susan Lindgren Intermediate Center
4801 West 41st Street
St. Louis Park, MN 55416

Cedar Manor Intermediate Center
9400 Cedar Lake Road
St. Louis Park, MN 55426

St. Louis Park Jr. High School
2025 Texas Avenue South
St. Louis Park, MN 55426

St. Louis Park Sr. High School
6425 West 33rd Street
St. Louis Park, MN 55416

District Maintenance Shop
6400 Walker Street
St. Louis Park, MN 55416

Cable TV connection to Non-Public Schools is by arrangement between the system operator and each school.

Certain school buildings are currently being provided service through school-owned transmission facilities. The City agrees that free service to such schools shall be contingent upon continued availability of such school-owned transmission facilities or some other mutually acceptable arrangement.

Exhibit B

St. Louis Park Inventory		STUDIO	
QUANT.	ITEM	M/N	S/N
2	Sony Cameras	DXC-1820	10208 13690
2	Sony Viewfinders	DXF-40	14354 14353
2	Canon 1820 Lenses	VCL1012SY	13336 16115
2	Sony ENG Viewfinders	DXF-1820	10192 14156
2	Canon Rear Focus Controls (1820)		
2	Canon Focus Cables		
2	Remote Control Zooms (1820)		
2	Sony 25m Camera Cables		
1	JVC 20m Camera Cable		
1	Miller Tripod/Head/Dolly	705	51376
2	Gitzo Camera Tripods	G515	
2	Bogen Tripod Head	3066	
2	Bogen Tripod Dolly	3067	
2	Berkey Colortron Fresnel Lights	LQV-10	
3	Smith-Victor Broad Lights	750	
2	Sony Lavalier Microphones	ECM-44B	215677 200153
1	Sony Lavalier Microphone	ECM-30	22305
2	Sony Lavalier Microphones	ECM-50PS	40619
1	Panasonic Monitor	1920	UG4327812
2	Easels for Camera Cards		
4	Lear/R-Columbia Intercom Headset	RC-75/B	
3	Lear/R-Columbia Intercom Station	RC501	
1	Clearcom Intercom Station	501	A076955
1	Lear/R-Columbia Power Station	MS/PW5	
1	Realistic Speaker		
1	Kodak Slide Projector		

St. Louis Park Inventory		CONTROL ROOM	
QUANT.	ITEM	M/N	S/N
2	Winstead Racks on Caster Frames		
2	Emcor 72" Racks		
1	Panasonic Production Switcher	WJ5500B	33A00330
1	Tektronix Waveform Monitor	528	B227567
1	Alta Timebase Corrector	Cygnus	HHC976

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1	Amiga Computer	A-2000	HK0022936
1	Amiga Computer Keyboard	KKQ-E944C	MT9207
1	Amiga Mouse Pad		
1	Amiga Mouse	B27000271	
1	Super Gen-Amiga Genlock	SG-10	3JSG0299177
1	Amiga Workbench Program		
1	Deluxe Paint II Program		
1	TV TEXT Program		
1	JMH EASY TITLER Program		
1	Video & Audio Patch Bay 2x26		
21	Video & Audio Patch Cords		
1	Furio Wall Clock		
1	Shure Audio Mixer	M267	
1	Panasonic Audio Mixer	WR450	
3	Panasonic B&W 5" Monitors	WV-5200BU	18Z02384 18Z02385 18Z02386
3	SEC Electronics 5" Monitors	CH917	605619 605591 807550
1	Toshiba TV-Monitor	CF2044J	83482612
2	Sony Camera Power Supplies	CMA-8	12555 12556
1	Sony Trinitron 8"	PVM-8200T	011441
1	Panasonic B&W 8" Monitor	TR-930B	KD9531020
1	JVC Remote Control Unit	RMP200	15551091
2	Sony Camera Control Units	CCU-1820	10322 10743
1	TEAC Audio Cassette Recorder	CX-311	1203103
1	JVC VHS VCR	BR-6400N	8915804
1	Panasonic SVHS VCP	AG-7150K	G2TC00224
1	Panasonic SVHS VCP	AG-7150K	G2TC00214
1	Sony U-matic VCP	VP-7020	15149
1	Sony U-matic VCP	VP-7000	17617
1	Microtime TBC	T120	TXP8500N
2	Sony Trinitron Color Monitors	PVM8200	503478 503594
2	Sony 3/4" VCR	5850	17320 72958
1	Sony Edit Controller	RMM-440	17495
2	Multi-pin Cables for above		
1	Gralab Darkroom Timer		
1	Realistic Speaker 10"		
1	9 Outlet Power Strip		
1	6 Outlet Power Strip		
2	13 Outlet Power Strip		
1	16 Outlet Power Strip		
1	15 Outlet Power Strip		
1	Texscan/MSI Playback System	SG4BRM	306

1	Texscan/MSI Charactor Generator	SG4	
1	Sigma Video Distribution Amp	VDA100A	5830018
1	ISS Video Demodulator	GL-1000A	
1	Logic Relay Board		
1	Sony Color Monitor/receiver 12"	CVM1250	505835
1	Texscan Keyboard	SG-4	103
1	Gray Metal Rack		

St. Louis Park Inventory		PRODUCTION VAN	
QUANT.	ITEM	M/N	S/N
3	Emcor Racks		
1	ECHOlabs Special Effects Generator	DV-7	7577
1	Canopus Digital Video Converter	ADVC-500	709748
1	Videonics Firestore	FS-1	3484
5	LaCie External Hard Drives	300699U	0869404300584C 0869404300556C 0869402250014C 0869404300544C 0869404300552C
1	Sigma Color Bars Generator	CBG-100A	
1	Sigma Black Burst Generator	BSG-100A	
2	Sigma Video Distribution Amp.	VDA-100A	
1	Panasonic Video Switcher	WJ-220R	28200053
4	Panasonic Color Cameras	WV-F200CLE	88AO9513 9501 9520 9514
4	Panasonic Camera Control Units	WV-RC-36	47R00110 88R00293 301 305
4	Panasonic Studio Viewfinder	WV-VF65B	89I51160 89I51210 8XI51548 72I52957
2	Panasonic ENG Viewfinder	WV-VF38 WV-VF38A	85Z00203 9ZZ00406V
2	Panasonic Camera Case		
2	Portabrace Softsided camera case		
4	Canon Manual Focus Control	NA	NA
4	Canon Servo Zoom Control	WV-LK35	NA
11	Panasonic Camera Cable-100 ft	32A-100	
4	Panasonic Camera Cable-50 ft	32A-50	
6	Panasonic Camera Cable-20 ft	32A-20	
1	Sony U-matic VCR	VO-5800	20563
1	Sony VTR Remote Control Unit	RM-500	23203

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2	Panasonic SVHS VCR	AG-7300	B1TH00425 C8TB00047
1	Sony Color Monitor (announcer)	PVM-8040	2014440
2	JVC Color Monitors	TM-A9UCV/A	17400866 17400859
3	Panasonic 5" B&W Monitors	WV-5200BU	96I01504 503 502
3	Panasonic 5" B&W Monitors	WV-BM500U	61W15954 955 956
1	JVC 9" Color Monitor	TM-R9U	6304796
1	Panasonic 13" Color Monitor	CT-1384VY	MB42080329
1	Tektronix Waveform/Vector Monitor	1740	B025642
1	Soundcraft 12 Ch. 4 Bus Mixer	Sprint SX	RW5347006586
1	Telex Mastercontrol Station	MS-2002	10386
1	Telex Headset	PH1	64438-005
1	David Clark Headset	H3390	16985G-04
3	Telex Headsets	PH81	64438-004
1	Light Kit		
1	Lowell Barn Door Frame		
1	Lowell Quartz Spot-Flood		
2	Lowell Light Stands		
2	Barn Door Frames/Smith-Victor		
2	Smith-Victor Flood/Spot Lights	720	
1	Smith-Victor Plate Stands	SA48	401234
1	Audio Kit Case		
1	Gitzo Tripod		
1	ITE Tripod Head	H-40	
1	Miller Dolly		
2	ITE Dollies	D-40	
1	Sennheiser EW100 Receiver	EK100	130814
1	Sennheiser EW100 Transmitter	EK100	103418
3	Miller Tripod Head	157	D70542 D70775 D70777
3	Miller Tripod	1307	TG0196 TG0425 TG0427
3	Shure Desk Top Mic Stands		
1	6 Outlet AC Power Strips		
2	50' Blue Grounded AC Cords		
1	100' Orange Grounded AC Cord		
1	100' Yellow AC Cord		
1	50' Orange AC Cord		
5	100' XLR Audio Cables		
3	50' XLR Audio Cables		
2	20' XLR Audio Cable		

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1	Pro Co Roadmaster 200' 6x2 Audio Snake	HE-123565	
2	Panasonic Monitors	TR-930	Kn2141658
			1657
1	For A Time Base Corrector	FA-310	3245917
2	Beyerdynamics Announcer Headsets	DT 290	15061
			4807
1	Videophonics Character Generator	PS-10005	300159
2	EV Lavalier Microphones	C090 Lo-Z	9342
1	EV Handheld Mic	635A	
3	Long RF Cables		
1	Panasonic AC Adapter/Charger	WV-PS31	96I51111
1	Panasonic Condenser Shotgun Mic	WV-MC35	
2	Ultimate Floor Mic Stands		
1	Telex Vac Box	IC1	
1	Portable Table		
1	Case (for announcer equipment)		
1	Announcer Module		
2	Stools		
1	Plastic Box (for zoom and focus arms)		

(Ord No. 2309-06, 1-18-06)

TELECOMMUNICATIONS*

**ARTICLE II. QWEST BROADBAND SERVICES, INC. DBA CENTURYLINK
CABLE FRANCHISE**

- Sec. 28-2-1. Granting Ordinance; Purposes.**
- Sec. 28-2-2. Short Title.**
- Sec. 28-3-3. Definitions.**
- Sec. 28-2-4. Application for a franchise.**
- Sec. 28-2-5. Grant of franchise.**
- Sec. 28-2-6. Franchise required.**
- Sec. 28-2-7. Privileges and obligations under the franchise.**
- Sec. 28-2-8. Duration of franchise.**
- Sec. 28-2-9. Franchise payment.**
- Sec. 28-2-10. Security for performance.**
- Sec. 28-2-11. Liability insurance and indemnification.**
- Sec. 28-2-12. System facilities; capabilities.**
- Sec. 28-2-13. Construction and technical standards.**
- Sec. 28-2-14. PEG programming and Leased Access channels.**
- Sec. 28-2-15. Interconnection/Service to government and school buildings.**
- Sec. 28-2-16. System Construction requirements.**
- Sec. 28-2-17. Fees, rates and charges.**
- Sec. 28-2-18. Conditions of public property occupancy.**
- Sec. 28-2-19. Operation of the franchise/consumer service.**
- Sec. 28-2-20. Rights reserved; resolution of disputes.**
- Sec. 28-2-21. Enforcement.**
- Sec. 28-2-22. Renewal.**
- Sec. 28-2-23. Removal after termination or revocation.**
- Sec. 28-2-24. Expiration or revocation of franchise.**
- Sec. 28-2-25. Abandonment.**
- Sec. 28-2-26. Unauthorized connections.**
- Sec. 28-2-27. Severability.**
- Sec. 28-2-28. Work performed by others.**
- Sec. 28-2-29. Administration and advisory body.**
- Sec. 28-2-30. Time of acceptance; exhibits**

***Charter reference(s)**--Franchises, ch. 9.
Cross reference(s)--Businesses and licenses, ch. 8; streets, sidewalks and other public places, ch. 24; utilities, ch. 32; zoning, ch. 36.
State law reference(s)--Cable communications, M.S.A. ch. 238.

**ARTICLE II. QWEST BROADBAND SERVICES, INC. DBA
CENTURYLINK CABLE FRANCHISE**

Sec. 28-2. Cable franchises

Sec. 28-2-1. Granting Ordinance; Purposes.

The City has determined that it is desirable and advantageous to the citizens of St. Louis Park to grant a competitive cable television franchise to Qwest Broadband Services, Inc. d/b/a CenturyLink ("Company" as defined herein). In accordance with state and federal law requirements, the City has reviewed and found sufficient Company technical ability, financial condition, and legal qualifications to operate in St. Louis Park and hereby determines that it is in the public interest to grant to Company a full and complete, nonexclusive franchise for a period of five (5) years for the operation and maintenance of a cable television in St. Louis Park; provided, however, the franchise is subject to the terms and conditions set forth in this Franchise Ordinance.

Sec. 28-2-2. Short Title.

This Competitive Franchise Ordinance shall be known and may be cited as the "CenturyLink Competitive Cable Communications Franchise Ordinance," hereinafter "Franchise Ordinance", and it shall become a part of the ordinances and Legislative Code of the City of St. Louis Park.

Sec. 28-2-3. Definitions.

In this Franchise Ordinance the following terms, phrases, words and their derivations have the meanings given. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are always mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

Basic Service means the lowest priced tier of Cable Service that includes the retransmission of local broadcast television signals; any public, educational, and governmental access programming required by this Franchise Ordinance to be provided to Subscribers; any regional channel required by state law; and additional video programming signals or services added by cable operator.

CATV System is synonymous with "Cable System" or "System" and means the Company's facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the Franchise Area. Unless otherwise specified, CATV System in this document means the Cable System or System utilized by the Company in the City.

Cable Service means (1) the one-way transmission to Subscribers of (a) video programming, or (b) other programming service, and (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

City means the City of St. Louis Park, Minnesota as it exists now and as its borders may from time to time be changed; including, without limitation, its officers, boards, commissions, elected officials, agents, attorneys, representatives, servants and employees.

Company means Qwest Broadband Services, Inc. d/b/a CenturyLink, the grantee of rights and obligations under this Franchise Ordinance, and all successors, transferees, assignees, subcontractors, agents, employees and representatives of Company.

Company's place of business means Company offices with financial records and maps, which shall be located in the Minneapolis/St. Paul metropolitan area.

Effective Date means December 12, 2015.

FCC means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.

Franchise Area means the present boundaries of the City of St. Louis Park, Minnesota, and shall include any additions thereto by annexation or other legal means.

Franchise Ordinance means the incorporated terms of this Competitive Cable Television Franchise Ordinance, governing the operation of a CATV System within and throughout the City of St. Louis Park.

Gross revenues means all revenues earned directly or indirectly by the Company, arising from or in connection with the provision of Cable Service in the City and consistent with local, state and federal law, including Subscriber revenues (including pay TV), amounts collected as franchise fees, advertising income, home shopping programs and rentals of Subscriber equipment, recorded as earned, in accordance with generally accepted accounting principles, in the area under jurisdiction of the City. The Company is not required to include revenues recorded as earned but which are deemed uncollectable, but it must include recoveries previously deemed uncollectable. This definition of Gross revenues also does not include sales, excise or other taxes (other than franchise fees) collected by the Company on behalf of federal, state, county, City or other governmental unit, including FCC user fees. Funds collected by the Company to recover amounts paid to support public, educational and governmental access programming are also excluded from the definition of Gross revenues.

ISD 283 means Independent School District 283, located within the City of St. Louis Park.

Living Unit means a distinct address as tracked in the QC network inventory, used by CenturyLink to identify existing or potential Subscribers. This includes, but is not limited to, single family homes, multi-dwelling units (e.g., apartment buildings and condominiums) and business locations.

Mosaic Channel means a channel which displays miniaturized media screens and related information for a particular group of channels with common themes. The Mosaic Channel serves as a navigation tool for Subscribers, which displays the group of access channels on a single channel screen and also provides for easy navigation to a chosen access channel in the group.”

Multichannel Video Programming Distributor means a Person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, open video system operators, telephone companies, utility companies or a television receive-only satellite program distributor, who makes available for purchase, by Subscribers or customers, multiple channels Cable Service or substantially equivalent video programming.

PEG means the public, educational and governmental access channels, equipment, programs or facilities, as the context dictates.

Person means any person, firm, partnership, association, corporation, company, organization or entity.

Public Property means any real property owned by the City other than a highway, sidewalk, easement or dedication.

Public Way, Right of Way or ROW means the space on, over, above and below any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public Right of Way, including, but not limited to, public utility easements, dedicated utility strips, or Rights of Way dedicated for compatible uses now or hereafter held by the City in the Franchise Area which shall entitle the Company to the use thereof for the purpose of installing, operating, repairing, and maintaining the CATV System.

QC means Qwest Corporation d/b/a CenturyLink (“QC”), an affiliate of Company.

Qualified Living Unit means a Living Unit which meets the minimum technical qualifications defined by Company for the provision of Cable Service. A Living Unit receiving a minimum of 25Mbps downstream generally will be capable of receiving Cable Service subject to Company performing certain network grooming and conditioning. For purposes of this definition of Qualified Living Unit, “network grooming and conditioning” means evaluating existing QC infrastructure and making improvements to allow greater data throughput.

State-of-the-Art means equipment or facilities that:

- (1) Are readily available with reasonable delivery schedules from two or more sources of supply;
- (2) Have the capability to perform the intended functions demonstrated within communities with similar characteristic (including, but not necessarily limited to, population, density, Subscriber penetration, etc.) under actual operating conditions for purposes other than tests or experimentation; and
- (3) Are technically and economically feasible to implement. The term “State of the Art” shall not include equipment or facilities associated with or dedicated to the general public, educational or governmental access or telecommunication services.

Subscriber means any Person who lawfully receives Cable Service from the Company and does not further distribute it.

Sec. 28-2-4. Application for a franchise.

Applications for a franchise, other than a franchise renewal pursuant to 47 U.S.C. §546, shall be filed with the City Clerk in accordance with instructions promulgated by the City and shall contain the following information and provisions:

- (1) The name and business address of the applicant(s), date of application and signature of applicant(s) or appropriate corporate officer(s).
- (2) A description of the legal, technical and financial qualifications of the applicant(s).
- (3) Payment of the required filing fee.
- (4) Any applicant (including, specifically, the Company) shall reimburse City at the time the applicant accepts a franchise for all reasonable costs of the City in connection with the granting or renewal of a franchise, including costs for legal services and publication.

- (5) A general description of the applicant's proposed operation.
- (6) A statement of the applicant's proposed schedule of charges.
- (7) A statement detailing the corporate organization of the applicant, if any, including the names and addresses of its officers and directors and the division of shares between shareholders.
- (8) A statement describing all intra-company relationships of the applicant including parent, subsidiary or affiliated companies.

Sec. 28-2-5. Grant of franchise.

(1) Grant. The Company shall have the nonexclusive right and privilege, subject to the provisions of this Franchise Ordinance to construct, erect, and maintain, in, upon, along, across, above, over and under the Rights of Way in the Franchise Area a CATV System and shall have the right and privilege to provide Cable Service. The System constructed and maintained by Company or its agents shall not interfere with other uses of the Rights of Way. Company shall make use of existing poles and other above and below facilities available to Company to the extent it is technically and economically feasible to do so. Nothing contained in this Franchise, shall be construed to give Company the authority to enter upon or work on private property in areas not encumbered with public easements without the permission of the property owner. Company promises and guarantees, as a condition of exercising the privileges granted by this Franchise, that any affiliated entity of the Company involved in the offering of Cable Service in the City, or directly involved in the ownership, management or operation of the CATV System in the City, shall also comply with all obligations of this Franchise. However, the City and Company acknowledge that QC will be primarily responsible for the construction and installation of the facilities in the Rights-of-Way which will be utilized by Company to provide Cable Services. So long as QC does not provide Cable Service to Subscribers in the City, QC will not be subject to the terms and conditions contained in this Franchise. QC's installation and maintenance of facilities in the Rights-of-Way is governed by applicable local, state and federal law. To the extent Company constructs and installs facilities in the Rights-of-Way, such installation will be subject to the terms and conditions contained in this Franchise Ordinance. Company is responsible for all provisions in this Franchise Ordinance related to: 1) its offering of Cable Services in the City; and 2) the operation of the CATV System regardless of what entity owns or constructs the facilities used to provide the Cable Service. The City and Company agree that to the extent QC violates any applicable federal, state, or local laws, rules, and regulations, the City shall first seek compliance directly from QC. In the event, the City cannot resolve these violations or disputes with QC, then the City may look to Company to ensure such compliance. Failure by Company to ensure QC's or any other Affiliate's compliance with applicable local, state and federal laws, rules, and regulations shall be deemed a material breach of this Franchise Ordinance by Company.

(2) Other Ordinances. The Company agrees to comply with the terms of any generally applicable local ordinance. In the event of a conflict between any generally applicable ordinance and this Franchise Ordinance, the terms of this Franchise Ordinance shall control.

(3) State and Federal Law. Notwithstanding anything in this Franchise Ordinance to the contrary, the City and Company shall conform to state laws and rules regarding cable communications and shall conform to federal laws and regulations regarding cable as they become effective.

(4) Franchise Area. The Company is hereby authorized to provide Cable Services over a CATV System within the jurisdictional boundaries of the City, including any areas annexed by the City during the term of this Franchise. The parties acknowledge that Company is the not the first entrant into the wireline video market in the City. The Company acknowledges that the City desires wireline competition throughout the entire City so all residents may receive the benefits of competitive Cable Services. Company aspires to provide Cable Service to all households within the City by the end of the five (5) year term of this Franchise Ordinance. Company agrees that its deployment of Cable Service in the City will be geographically dispersed throughout the City, and shall be made available to diverse residential neighborhoods of the City without discrimination. This Franchise Ordinance governs any Cable Services provided by Company to residential and commercial Subscribers.

(5) Initial Build out. No later than the second anniversary of the Effective Date of this Franchise Ordinance, Company shall be capable of serving a minimum of fifteen percent (15%) of the City's households with Cable Service, provided, however, Company will make its best efforts to complete such deployment within a shorter period of time. Company agrees that a significant portion of its investment will be targeted to areas below the median income in the City. This initial minimum build-out commitment shall include a significant number of households below the median income in the City. City shall provide detailed maps of such areas. Nothing in this Franchise Ordinance shall restrict Company from serving additional households in the City with Cable Service.

(6) Quarterly Meetings. In order to permit the City to monitor and enforce the provisions of this section and other provisions of this Franchise Ordinance, the Company shall, upon demand, promptly make available to the City maps and other documentation showing exactly where within the City the Company is currently providing Cable Service either through FTTN or FTTH. Company shall meet with the City, not less than once quarterly, to demonstrate Company's compliance with the provisions of this section concerning the deployment of Cable Services in the City including, by way of example, the provision of this section in which Company commits that a significant portion of its initial investment will be targeted to areas below the median income within the City, and the provisions of this section that prohibit discrimination in the deployment of Cable Services. In order to permit the City to monitor and enforce the provisions of this section and other provisions of this Franchise Ordinance, the Company shall, commencing January 1, 2016, and continuing throughout the term of this Franchise Ordinance, meet quarterly with the City and make available the City the following information:

- (a) The total number of Living Units throughout the City;
- (b) The geographic area within the City where the Company is capable of delivering Cable Service through either a FTTH or FTTN method of service delivery which shall include sufficient detail to allow the City to determine the availability of Cable Service at Commercially-Zoned Parcels;
- (c) The actual number of Living Units capable of receiving Cable Service from Company through FTTH; and
- (d) A list of the public buildings and educational institutions capable of receiving Cable Service from Company (see list attached hereto as Exhibit A).

(7) Additional Build-Out Based on Market Success. If, at any quarterly meeting, including any quarterly meeting prior to the second anniversary of the Effective Date of this Franchise as referenced in Section 28-2-5 (5) herein, Company is actually serving twenty seven and one-half percent (27.5%) of the households capable of receiving Cable Service, then Company agrees the minimum build-out commitment shall increase to include all of the households then capable of receiving Cable Service plus an additional fifteen (15%) of the total households in the City, which Company agrees to serve within two (2) years from the quarterly meeting; provided, however, the Company shall make its best efforts to complete such deployment within a shorter period of time. For example, if, at a quarterly meeting with the City, Company shows that it is capable of serving sixty percent (60%) of the households in the City with Cable Service and is actually serving thirty percent (30%) of those households with Cable Service, then Company will agree to serve an additional fifteen percent (15%) of the total households in the City no later than two (2) years after that quarterly meeting (a total of 75% of the total households). This additional build-out based on market success shall continue until every household in the City is served.

(8) Nondiscrimination. Company shall provide Cable Service under non-discriminatory rates and reasonable terms and conditions to all Subscribers who reside in Living Units in any location where the Company is capable of providing Cable Service. Company shall not arbitrarily refuse to provide Cable Services to any Person or in any location where the Company is capable of providing Cable Service. Any Qualified Living Unit should also include Commercially-Zoned Parcels. "Commercially-Zoned Parcels" mean any street address or municipally identified lot or parcel of real estate with a building. Company shall not deny Cable Services to any group of Subscribers or potential Residential Subscribers based upon the income level of residents of the local area in which such group resides, nor shall Company base decisions about construction or maintenance of its CATV System or facilities based upon the income level of residents of the local area in which such group resides. Company shall provide such service at non-discriminatory monthly rates for residential Subscribers, consistent with applicable law. Company shall not discriminate between or among any individuals in the availability of Cable Service based upon income in accordance and consistent with 47 U.S.C. Section 541(a)(3), or based upon race or ethnicity.

(9) Standard Installation. Company shall provide standard installation of Cable Service within seven (7) days of a request by any Person in a Qualified Living Unit. A request shall be deemed made on the date of signing a service agreement, receipt of funds by Company or receipt by Company of a verified verbal or written request. Company shall promptly respond to all requests for service, repair, installation and information from Subscribers. Company 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.

(10) Multiple Dwelling Units. The Company shall offer the individual units of a multiple dwelling unit all Cable Services offered to other Dwelling Units in the City. Company shall, upon request, individually wire units of the property owner or renter who has been given written authorization by the owner. Such offering is conditioned upon the Company having legal access to said unit and any payment (for Company's reasonable costs of internal wiring) as applicable. The City acknowledges that the Company cannot control the dissemination of particular Cable Services beyond the point of demarcation at a multiple dwelling unit.

Sec. 28-2-6. Franchise required.

After the Effective Date of this Franchise Ordinance, to the extent required by Applicable Law, no Person shall establish, operate or carry on the business of distributing to any Person in the City any television signals, or radio signals or other intelligences, either analog or digital, by means of the Public Ways unless a franchise has first been obtained pursuant to the provisions of applicable City codes, this Franchise Ordinance, and unless such franchise is in full force and effect. No Person shall construct, install or maintain within any public street in the City, or within any other Public Property of the City, or within any privately owned area within the City which has not yet become a public street on any tentative subdivision map approved by the City; any equipment or facilities for distributing any television signals or radio signals or other intelligences either analog or digital unless a franchise authorizing the use of the streets or properties or areas has first been obtained pursuant to the provisions of any applicable City codes and this Franchise Ordinance, and unless such franchise is in full force and effect.

Sec. 28-2-7. Privileges and obligations under the franchise.

(1) Privileges Subordinate. Any privilege claimed under a franchise in any street or other Public Property shall be subordinate to any lawful occupancy of the street or other Public Property by the City for City purposes or to any present or future improvements to the streets by the City, including without limitation sidewalks and roadway widening.

(2) Consent to Transfer.

(a) The sale or transfer of the CATV System franchised under this Franchise Ordinance requires the prior written approval of the City. The parties to the sale or transfer shall make a written request to the City for its approval of the sale or transfer, and the request shall be processed by the City as required by federal and state law.

(b) A transfer of the Franchise Ordinance shall not include a transfer of ownership or other interest in Company to the parent of Company or to another Affiliate of Company; transfer of an interest in the Franchise Ordinance or the rights held by Company under the Franchise Ordinance to the parent of Company or to another affiliate of Company; or any action which is the result of a merger of another affiliate of Company. Nothing in this Section 28-2-7(2)(b) shall be read to serve as a waiver of Company's obligation to obtain the City's advance written consent to any proposed transfer that constitutes a change in the "controlling interest" of the Company as set forth in Minn. Stat. Section 238.083.

(3) Additional Franchises.

(a) The Company acknowledges and agrees that the City reserves the right to grant one (1) or more additional franchises or other similar lawful authorization to provide Cable Services or video programming services within the City; provided, however, that no such franchise or similar authorization shall contain material terms or conditions which are substantially more favorable or less burdensome to the competitive entity than the material terms and conditions herein.

(b) Notwithstanding any provision to the contrary, if a non-wireless Multichannel Video Programming Distributor legally authorized by state or federal law, makes available for purchase by Subscribers or customers, Cable Services or other video

programming services within the Franchise Area without a franchise or other similar lawful authorization granted by the City, then Company or City shall have the right, upon one hundred eighty (180) days advance written notice to the other party, to terminate this Franchise Ordinance. Nothing herein shall in any way limit or reduce Company's right to provide Cable Service in the City under applicable state or federal law or the City's right to regulate Company's provision of Cable Services in the City.

(4) Notices. All notices from Company to the City pursuant to this Franchise Ordinance shall be filed with the City Clerk and with the City Manager. Company shall maintain with the City, throughout the term of this Franchise Ordinance, an address for service of notices by mail. Company shall also maintain with the City, a local office and telephone number for the conduct of matters related to this Franchise Ordinance during normal business hours.

Sec. 28-2-8. Duration of Franchise.

This Franchise Ordinance shall be in effect for a term of five (5) years from the date of acceptance by Company, unless terminated sooner as hereinafter provided. Six (6) months prior to the expiration of the initial five (5) year term, if City determines that Company is in compliance with all other material terms of this Franchise Ordinance including the build out obligations set forth in this Franchise Ordinance as required by applicable law, the City shall have the unilateral right to extend the Franchise Ordinance for an additional term of no less than five (5) years and no more than ten (10) years.

Sec. 28-2-9. Franchise Payment.

(1) Payment to the City. The Company shall pay to the City an annual franchise fee in an amount equal to five percent (5%) of the annual Gross revenues received by the Company for Cable Services within the City. Payment will be made to the City with an itemization of the Gross revenues. In no event shall Company be required to pay a higher franchise fee percentage than any other franchised cable provider in the City.

(2) Method of Computation; Interest. Local sales taxes or other local taxes levied directly on a per-Subscriber basis and collected by the Company shall be deducted from the local Gross revenues before computation of sums due the City is made. Payments due the City under the terms of this Franchise Ordinance shall be computed and paid within forty-five (45) days of the end of each calendar quarter. The City shall be furnished a statement with each payment, certified as correct by the Company, reflecting the total amounts of Gross revenues, and the above charges, deductions and computations, for the three (3) months' payment period covered by the payment.

(3) In the event that any franchise fee payment is not made on or before the applicable date(s) specified, interest on the amount due (as determined from the gross operating receipts computed by an independent certified public accountant), shall accrue from the required payment date at the annual rate of twelve percent (12%).

(4) Rights of Recomputation. No acceptance of any payment shall be construed as a release or as an accord and satisfaction of any claim the City may have for further or additional sums payable as a franchise fee under this Franchise Ordinance or for the performance of any other obligation. The period of limitation for recovery by the City of any franchise fee payable hereunder shall be three (3) years from the date on which payment by the Company is due to the City or for any period covered by an audit conducted pursuant to and in accordance with Section 28-2-19(4).

(5) Late Payments. The City's acceptance of a late payment by the Company shall not be deemed a waiver of their right to enforce timely payments in the future.

(6) In addition to Cable Service, the Company (either by itself or through one (1) or more affiliates) may provide information and telecommunications services. For purposes of calculating the franchise fee when the Company packages or “bundles” Cable Services with other services not subject to franchise fees, the Company shall allocate revenues and compute the franchise fee due pursuant to this Franchise Ordinance in accordance with EITF 00-21 or such subsequently issued generally accepted accounting principles (“GAAP”) which amend or supersede EITF 00-21, or as otherwise required by applicable law. In the event EITF is amended or superseded, the Company will notify the City of such change in its required franchise fee report.

Sec. 28-2-10. Security for performance.

(1) Performance Bond.

- (a) Terms of Bond. Within thirty (30) days of the Effective Date of this Franchise Ordinance, the Company shall file with the City Clerk at its own expense, and at all times thereafter maintain in full force and effect for the term of this Franchise Ordinance or any renewal, running to the City, a faithful performance bond in the amount of Fifty Thousand Dollars \$50,000.00. The bond shall be retroactive to the Effective Date of this Franchise Ordinance. The bond shall be issued by a responsible company licensed to do business in the State of Minnesota, renewable annually and conditioned upon the faithful performance by the Company of all the terms and conditions of this Franchise Ordinance. This performance bond shall contain the further condition that in the event Company shall fail to comply with any law, ordinance or regulation governing the Franchise Ordinance, any such failure be deemed material, and the principal and surety of the bond shall be jointly and severally liable for any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of the Company up to the full amount of the bond.

This condition shall be a continuing obligation for the duration of the Franchise Ordinance and any renewal or extension and until the Company has liquidated all of its obligations with the City that may arise from the Company's acceptance of this Franchise Ordinance or from Company's exercise of any privilege or right granted by this Franchise Ordinance.

Notwithstanding the above provisions of this subsection, the Council may in its sole discretion waive the bond or reduce the required amount after five (5) years of operation of a CATV System under the Franchise Ordinance by the Company if the operation, in the sole opinion of the City, has been satisfactory.

The bond(s) should be subject to the approval of the City and shall contain the following endorsement:

It is hereby understood and agreed that this bond may not be cancelled until sixty (60) days after receipt by the City (by filing with the City Clerk), by registered mail return receipt requested, of a written notice of intent to cancel, intent not to renew, or material change in the bond.

- (b) Delays in Performance. The bond(s) required in this subsection shall provide that with fifteen (15) days' prior written notice to the Company, the City may recover against the surety the sums provided for failure to complete construction in accordance with Section 28-2-5 of this Franchise Ordinance.

(2) Letter of Credit.

- (a) Within thirty (30) days after the Effective Date of this Franchise Ordinance, Company shall deposit with the City an effective irrevocable letter of credit from a financial institution acceptable to the City Attorney (and maintain at all times through the term of this Franchise Ordinance), in the amount of Twenty Thousand Dollars (\$20,000.00). The form, manner and content of the letter of credit shall be subject to the approval by the City Manager, which approval shall not be unreasonably withheld. The letter of credit shall be used to insure the faithful performance by Company of all the provisions of this Franchise Ordinance and compliance with all orders, permits and directions of City lawfully imposed on Company and the payment by Company of any claims, liens and taxes due City which arise by reason of the construction, rebuild, upgrade, operation or maintenance of the CATV System. City reserves the right, in its sole discretion, to reduce the required amount of the letter of credit.
- (b) If Company fails to pay to City any taxes due and unpaid or fails to repay to City, any penalties, damages, costs or expenses for which the Company is required to indemnify the City under this Franchise Ordinance or is deemed, pursuant to the procedures required under Section 28-2-21 hereof, to comply with any provision of the Franchise Ordinance which City reasonably determines can be remedied by an expenditure of the security, City may immediately request and receive payment of the amount due and owing (with interest and any penalties) from the financial institution holding the letter of credit. Upon request for such payment, City shall notify the Company of the amount and date of the payment.
- (c) Whenever the City shall receive payment of any amount against the letter of credit, the Company shall pay to or deposit with the financial institution holding the letter of credit an amount sufficient to replenish the letter of credit to its full value of Twenty Thousand Dollars (\$20,000.00) within ten (10) days after the Company has been notified of the City's request for payment. The City Manager shall be furnished with written proof of replenishment not later than twenty-four (24) hours after it is accomplished.
- (d) The Letter of Credit shall contain the following endorsement:

It is hereby understood and agreed that this Letter of Credit may not be cancelled by the financial institution nor the intention not to renew be stated until thirty (30) days after receipt by the City, by registered mail, of a written notice of such intention to cancel or not to renew.

- (3) Rights Reserved to City. The rights reserved by the City with respect to the bond(s) and letter of credit are in addition to all other rights and remedies the City may have under this Franchise Ordinance or any other law.

Sec. 28-2-11. Liability insurance and indemnification.

(1) Liability Insurance.

- (a) At all times during the term of the Franchise Ordinance, Company shall maintain and (by its acceptance of a franchise under this Franchise Ordinance) specifically agrees that it will maintain in full force and effect, and at its own cost and expense comprehensive general liability insurance insuring the City and the Company from claims which may arise from Company's operations under this Franchise. The insurance must provide for at least Four Million Dollars (\$4,000,000) in coverage for personal injury or death from any occurrence. The policy or policies shall afford the same limits of liability as set out above for liability assumed under contract. The policy or policies shall name the City as an additional insured and provide that no other insurance maintained by the City will be called upon to contribute to a loss covered under that policy.

All insurance policies maintained pursuant to this Franchise Ordinance shall contain the following endorsement:

It is understood and agreed that this insurance policy may not be cancelled nor the intention not to renew be stated until sixty (60) days after receipt by the City, by registered mail, of written notice of such intention to cancel or not to renew.

(2) Indemnification.

- (a) The Company shall indemnify and hold harmless the City from any suit, claim or demand whatsoever which may be asserted or recovered against it based upon or arising out of Company's construction, maintenance, or operation of the System or any part thereof; provided, that such suit, claim, or demand is not based upon the City's own intentional or negligent conduct. The City agrees to immediately notify Company, in writing and within forty-eight (48) hours (unless notification within forty-eight (48) hours would be unreasonable due to extraordinary circumstances) of any claim or suit against the City for which Company may be required to indemnify the City. In the event Company is required to defend the City in connection with this section, the City agrees to tender control of its defense to Company and Company shall have the right to select defense counsel. The City agrees to cooperate in its own defense. This section does not apply to claims brought against the City pertaining to the granting of this Franchise Ordinance.
- (b) Reserved.
- (c) City reserves the right, at its own expense, to participate in the defense of any claim identified above either through intervention or otherwise.
- (d) The City is in no manner or means waiving any governmental immunity or limitation of liability it may enjoy or any immunity or limitation of liability for its agents, officials, servants, attorneys, representatives and/or employees.
- (e) The Company shall make no settlement in any matter identified above without the City's written consent, which shall not be unreasonably withheld. Failure to inform the City of settlement shall constitute a breach of this Franchise Ordinance and the City may seek any redress available to it against the Company whether set forth in this Franchise Ordinance or under any other municipal, state or federal laws.

- (f) Company shall contemporaneously with this Franchise execute an Indemnity Agreement in a form acceptable to the City Attorney attached as Exhibit B, which shall indemnify, defend and hold the City harmless for any claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and reasonable attorneys' fees or reasonable expenses arising out of the actions of the City in granting this Franchise Ordinance. This obligation includes any claims by another franchised cable operator against the City that the terms and conditions of this Franchise Ordinance are less burdensome than another franchise granted by the City or that this Franchise Ordinance does not satisfy the requirements of applicable federal, state, or local law(s).
- (g) The City's exercise of or failure to exercise any rights pursuant to any section of this Franchise Ordinance shall not affect in any way the right of City subsequently to exercise any such rights or any other right of City under this Franchise Ordinance or any other ordinance, rule, regulation or law.

Sec. 28-2-12. System facilities; capabilities.

- (1) Business Office. During the term of the Franchise the Company shall comply with one (1) of the following requirements:
 - (a) The Company shall maintain a full service office at a location convenient to the public, it being understood and agreed that any location within ten (10) miles of the City shall be deemed convenient to the public. At such time as Company ceases to maintain such an office in the City, the Company shall provide for the convenience of its customers drop boxes for payments and equipment at up to two (2) locations to be determined by mutual agreement of the parties; provided, however, that the City agrees to provide locations on City-owned property at which such drop boxes may be located. Equipment exchanges and other customer service needs may also be addressed through Company's direct service offerings.
 - (b) Company shall maintain convenient local Subscriber service and bill payment locations for the purpose of receiving Subscriber payments or equipment returns. Unless otherwise requested by the Subscriber, Company shall deliver replacement equipment directly to the Subscriber at no cost to the Subscriber. The Company shall maintain a business office or offices for the purpose of receiving and resolving all complaints regarding the quality of service, equipment malfunctions, billing disputes and similar matters. The office must be reachable by a local, toll-free telephone call, and Company shall provide the City with the name, address and telephone number of an office that will act as the Company's agent to receive complaints, regarding quality of service, equipment malfunctions, billings, and similar matters. At a minimum Company shall also provide the following:
 - (i) Subscribers can remit payments at multiple third party commercial locations within the City (such as grocery stores or the Western Union).
 - (ii) Company will provide a service technician to any Qualified Living Unit in the City, free of charge to the Subscriber, where necessary to install, replace or troubleshoot equipment issues.
 - (iii) Subscribers shall be able to return and receive equipment, free of charge, via national overnight courier service (such as FedEx or UPS) if a service technician is not required to visit the Subscriber's Qualified Living Unit.

- (iv) In the event the Company provides Cable Service to a minimum of thirty percent (30%) of the total number of Cable Service Subscribers in the City served by cable operators franchised by the City, the Company shall then be required to also comply with the requirements of 28-2-12(1) (a) above.

(2) **Emergency Capability and Use.** The City and the Company shall conform to federal laws and regulations as they become effective, including 47 CFR Parts 11, 21, 63 and 76 regarding emergency alert system requirements.

Sec. 28-2-13. Construction and technical standards.

(1) **Compliance with Construction and Technical Standards.** Company shall construct, install, operate and maintain its' System in a manner consistent with all applicable laws, ordinances, construction standards, governmental requirements and FCC technical standards.

(2) **Performance Tests and Certification.**

(a) The Company shall be responsible for insuring that the CATV System is designed, installed and operated in a manner which fully complies with the technical standards of this Franchise Ordinance.

(b) The Company shall conduct complete performance tests of the CATV System as required by FCC regulations. The Company shall provide the City thirty (30) days advance notice of any test and, upon request, with a written report of the results of such FCC technical tests.

(c) Company shall bear all of the costs of technical standards testing required under FCC rules.

Sec. 28-2-14. PEG programming and leased access channels.

(1) **Specially Designated Public, Educational, Governmental ("PEG") and leased access channels.**

(a) Within one hundred eighty (180) days after the Effective Date of this Franchise, Company shall make available for access programming at least five (5) downstream video channels on the Subscriber network for public, educational and governmental access. Two (2) of the channels shall be specially designated for noncommercial public access; one (1) channel shall be dedicated to local non-commercial municipally-produced community programming; one (1) channel shall be specially designated for noncommercial access by local educational authorities; and one (1) channel shall be specially designated for noncommercial access for local government use. For the first one hundred eighty (180) days after the Effective Date of this Franchise, the City may draft and provide to Company a written explanation regarding the PEG channels that will soon be offered by the Company on the Company's Cable Service offering. The City shall email the content of this explanation, which shall not exceed two hundred fifty (250) words, to Company and Company shall, at its sole cost and free of charge to the City, print flyers containing this explanation ("PEG Flyer") that shall be distributed to Company's field technicians serving the City. The field technicians shall be instructed to include the PEG Flyer in all Subscriber installation packets for the City of St. Louis Park until such time as the PEG channels are available in the City.

- (1) Company shall use Channel 22 in its channel lineup as a means to provide ease of access by Subscribers to the access channels placed on channel numbers significantly higher than the access channels have historically been placed under other Cable Services franchises in the City. This type of channel shall be referred to as a “Mosaic Channel.” The Mosaic Channel shall serve as a navigation tool for Subscribers, which shall display the group of access channels on a single channel screen and also provide for easy navigation to a chosen access channel in the group.
- (2) Company shall use Channel 22 as a Mosaic Channel to display the access channels required under this Franchise Ordinance. Company shall not include any other programming or channels on the Mosaic Channel unless the City provides advance written consent. City shall provide audio content for Mosaic Channel from their point of origin (City Hall control room).
- (3) The Mosaic Channel mechanism shall allow Subscribers to navigate directly from Channel 22 to the requested access channel in a single operation without any intermediate steps. When using the Mosaic Channel, Subscribers shall be directed to the requested access channel in a high definition (HD) format if appropriate to the Subscriber’s level of service; otherwise, the Subscriber shall be directed to the standard definition (SD) access channel. The Mosaic Channel mechanism shall allow Subscribers to navigate directly from Channel 22 to the requested Access Channels which shall be located on Channel numbers 8114, 8115, 8116, 8117, and 8118 for the five (5) assigned PEG Channels.
- (4) Company shall consult with the City to determine the access channels information displayed on the Mosaic Channel. However, the information shall have video and audio strength, signal quality, and functionality equivalent to the highest quality broadcast and commercial cable/satellite channels carried by the Company on its Cable System in Mosaic format.

(b) At no time during the term of this Franchise Ordinance, shall the Company be required to provide a greater number of PEG channels than the incumbent provider. The parties recognize that under Minnesota State Law, Company is also required to provide one (1) channel for regional PEG access, but Company is only required to provide this channel for so long as it is required under State law, and the regional channel does not count against the channels described above.

(c) To the extent required by state law, the VHF spectrum shall be used for a least one (1) of the specially designated noncommercial public access channels required in this section. Company shall provide reception on these channels to each of the Subscribers who receive Basic Service. Company shall ensure that its delivery and transmission of PEG channels and programming shall be without material alteration or degradation of picture or sound content and will be of a quality consistent with FCC technical standards. In the event the Company changes the access channel designations (numbers), the Company shall, to the extent possible, provide sixty (60) days prior written notice of such change(s) to the City. In addition, the Company shall provide reasonable notice of such change(s) to Subscribers via, for example, bill stuffers or a channel crawl.

(2) PEG Carriage Requirements.

(a) While the parties recognize that while the primary signals of local broadcast stations are simulcast in standard definition (SD) and high definition (HD) formats, the Company's obligation with respect to carriage of PEG in HD and SD formats shall be as follows:

- (1) Company agrees to carry all access channels in HD provided the entity originating the signal provides the Company an HD signal. Further, Company will downconvert any such signal to an SD format so that Subscribers who choose not to subscribe to an HD package may receive said signal in an undegraded SD format.
- (2) Company is not required to convert a signal delivered in a lower quality format to a higher quality format. The City shall have no obligation to provide a signal to the Company in a HD format. Company shall obtain City PEG access channels at point of origin (City Hall control room). Company shall include pass-through, any captioning or text signals which are inserted by City or passed-through by City on its PEG access channels.
- (3) All PEG access channels must be receivable by Subscribers without special expense in addition to the expense paid to receive commercial services the Subscriber receives. City acknowledges that HD programming may require the viewer to have special viewer equipment (such as an HDTV and an HD-capable digital device/receiver), but any Subscriber who can view an HD signal delivered via the CATV System at a receiver shall also be able to view the HD PEG channels at that receiver, without additional charges or equipment. By agreeing to make PEG available in HD format, Company is not agreeing to provide free HD equipment to customers including complimentary municipal and educational accounts, or to modify its equipment or pricing policies in any manner. City acknowledges that not every customer may be able to view HD PEG programming (for example, because they do not have an HDTV in their home or have chosen not to take an HD-capable receiving device from Company or other equipment provider) or on every television in the home.

(b) The Company, upon request of the City, will promptly provide technical assistance or diagnostic services to determine whether or not any audio, video or channel information problem with the PEG signals is the result of matters for which the Company is responsible, and if so the Company will take prompt corrective actions.

(c) The Company will provide any PEG access channels on the Basic Service tier throughout the life of the Franchise, or if there is no basic tier, shall provide the PEG access channels to any Person who subscribes to any level of Cable Service, and otherwise in accordance with federal and state law. To the extent technically feasible, Company shall, upon request from the City, provide City with quarterly viewership numbers for each of the PEG access channels carried on Company's CATV System.

(d) Company shall facilitate carriage of PEG access channels program listings on its interactive programming guide, at no cost to the City, provided that the City shall hold Company harmless should the City or PEG providers fail to provide correct or timely information to the interactive guide programmers.

(e) If channels are selected through menu systems, the PEG access channels shall be displayed in the same manner as other channels, and with equivalent information regarding the programming on the channel. To the extent that any menu system is controlled by a third party, Company shall ensure that the Company will provide PEG listings on that menu system, if it is provided with the programming information by the City.

(3) Charges for Use of Public Access Channels. No charges shall be made for channel time or playback of prerecorded programming on at least one (1) of the specially designated noncommercial public access channels required by this section, provided, however, that personnel, equipment, and production costs may be assessed for live studio presentations exceeding five (5) minutes in length. Charges for such production costs and any fees or use of other public access channels shall be consistent with the goal of affording the public a low cost means of television access.

(4) Access Channel Rules. The governmental access channel, municipally operated channel, and public access channels, shall be administered solely by the City. The local educational channels shall be administered solely by ISD 283. The leased access channel(s) shall be administered solely by the Company.

(5) Reduction of Channel Capacity. If available channel capacity is reduced in the future or where demand for use does not warrant activation of all of the specially designated access channels required in this section; public, educational, governmental and leased access channel programming may be combined on one or more cable channels. To the extent consistent with the City's rules and where time is available, access channels may also be used for other broadcast and non-broadcast services, provided that such services are subject to immediate displacement and may be replaced by access channels if City determines, in its sole discretion, that there is demand to use the channel for its specially designated access purpose. To the extent required by State law, Company shall, in any case, provide at least one (1) full channel on the VHF spectrum for shared access programming. Available channel capacity shall be reduced or a determination that demand for use does not warrant activation of all the specially designated access channels required by this section shall be made only pursuant to the following procedure:

(a) Company will notify City of the proposed change;

(b) City shall make a determination following a process of review which takes into account such rules as may be established by City for this purpose and which affords notice and opportunity to be heard to all interested parties.

(6) Video on Demand. The Company shall provide HD/SD Video on Demand service (VOD) for government and community programming. The VOD service to be provided herein shall be limited to up to twenty (20) hours of HD or SD, as determined by the City, programming per month and, in addition to City-provided content, may include ISD 283 programming. The City will be solely responsible for determining programming priority and will be responsible for providing Company with good quality masters in a format determined through mutual agreement. A presentation form (stating program information, the City's acceptance of responsibility for content, "kill" dates, if applicable, and other matters) and content delivery method will be determined through mutual agreement of the parties.

(7) PEG Fee.

(a) The PEG fee, payable quarterly to the City, shall be One and 12/100 Dollars (\$1.12) per Subscriber, per month commencing on the Effective Date and continuing for the duration of this Franchise Ordinance (“PEG Fee”). Upon sixty (60) days’ notice to Company, City may elect to unilaterally increase the monthly per Subscriber PEG Fee. In no event shall the PEG Fee be assessed in an amount or manner different from that imposed upon the incumbent cable provider. In the event the incumbent cable provider agrees to or imposes a higher, or lower, PEG Fee, Company will increase or decrease its PEG Fee upon sixty (60) days written notice from the City. The PEG Fee may be used for operational or capital support of PEG programming as determined in the City’s discretion.

(b) If any laws, rules, regulations or government authorizations would allow a provider of multi-channel video programming or equivalent in the City’s Rights of Way to provide multi-channel video programming or equivalent under less burdensome regulations or regulatory structure than Company is operating under, the obligations of this section shall be modified to reflect such changes.

(c) Company agrees that financial support for PEG arising from or relating to the obligations set forth in this section shall in no way modify or otherwise affect Company’s obligations to pay franchise fees to the City. Company agrees that although the sum of franchise fees plus the payments set forth in this section may total more than five percent (5%) of Company’s Gross revenues in any twelve (12) month period, the additional commitments shall not be offset or otherwise credited in any way against any franchise fee payments under this Franchise Ordinance.

Sec. 28-2-15. Interconnection/service to government and school buildings.

(1) Programming Origination Sites. Company agrees to operate and maintain existing direct connections and necessary equipment for the purposes of cablecasting programming on the Subscriber network, as follows:

- (a) from ISD 283 High School headend to City Hall control room racks.
- (b) from ISD 283 football field grandstand to High School headend.
- (c) from City Hall control room racks to Company headend.
- (d) from Wolfe Park Veteran’s Memorial Amphitheatre to City Hall control room racks.
- (e) from designated equipment area in nearby Rec Center to City Hall control room racks.

Company shall not be liable or responsible for any costs or expenses resulting from any City or High School loss of or damage to connections or equipment or any changes to the City or High School’s wiring implemented by a party other than Company.

(2) PEG Origination Connection. City agrees that Company shall be allowed to meet the obligations of Section 28-2-15 (1) (a)–(e) by providing, free of charge and at no cost to the City, a direct fiber connection and necessary equipment to transmit PEG programming from the City Hall control room racks to the Company headend (“PEG Origination Connection”). In the event Company is not able to obtain all of the PEG programming at the PEG Origination Connection, the Company agrees to undertake construction of direct connections and necessary equipment to each of the programming origination sites set forth in Section 28-2-15 (1) (a)–(e).

(3) Future Programming Origination Sites. At such time that the City determines the need for additional programming origination sites (such as a school, City facility, other government facilities or other designated facilities), the City will give Grantee written notice detailing the point of origination and the capability sought by the City (i.e. the need to have the PEG programming feed back to the City Hall control room). Grantee agrees to install and maintain such fiber connection to the designation origination site within a reasonable period of time taking into consideration weather and related technical issues.

(4) Free Service to City Buildings and Public Schools

(a) As part of its support for PEG use of the System, the Company shall provide, at no cost to the City and to the affected institution, a free drop to the Subscriber network and free Basic Service and Expanded Basic Service to each public and private school, public library branch, police and fire station, community center and public building that requests a drop in writing, and to such other public institutions as the City may reasonably request from time to time provided such location is a Qualified Living Unit and not currently receiving service from another provider. The initial list of such public buildings is attached hereto as Exhibit A. However, City may determine to disconnect the other cable provider and require Company to meet the free service obligation, as determined in City's sole discretion. "Free" means no initial charges, recurring charges or service charges.

(b) The Company is only required to provide a single free drop to the Subscriber network, to a single outlet at a point within the location selected by that location. However, the location may extend the drop to multiple outlets and receive free Basic Service and Expanded Basic Service at each outlet so long as such extension does not result in any violations of leakage standards which the Company is obligated to meet by the FCC. A location that wishes to install multiple outlets may do so itself, or may contract with the Company to do so. Company shall provide up to three (3) devices to each location free of charge so that the Services can be received and individually tuned by each receiver connected to the drop at a location. If an institution physically moves locations, such institution may move existing devices to the new locations with a free drop, and the moved device will not count against the three additional devices. Company will replace and maintain devices it provides or that it had provided as necessary so that locations may continue to view the free services Company is required to provide. Provided such location is a Qualified Living Unit and not currently receiving service from another provider. However, City may determine to disconnect the other cable provider and require Company to meet the free service obligation, as determined in City's sole discretion.

(c) City may arrange a standard monthly fee for a DVR device, provided by Company, to enable recording of PEG access channels to monitor signal quality.

(d) Company shall maintain the City Hall and the City Emergency Operations Center located at the Police Station, 3015 Raleigh Avenue ("EOC") and Fire Station 1 Emergency Operations Center, 3750 Wooddale Avenue South as Qualified Living Units for the duration of the Franchise. Company shall at all times provide and maintain, free of charge, a drop to the Subscriber network, required set-top box and free Basic Cable and Expanded Basic Cable to the City Hall and both EOC's to allow the PEG access master control room at City Hall and the EOC's the ability to view (live) the Company's downstream PEG programming channels on Company's Cable System so the City can monitor the PEG signals and make certain that PEG programming is being properly received (picture and sound) by Subscribers.

(e) Company agrees that if any broadband service is required in order to receive the free service obligation set forth in this section, Company will provide such broadband service free of charge for the sole purpose of facilitating the provision free Cable Service required by this section. Company agrees that it will not offset, deduct or reduce its payment of past, present or future franchise fees required as a result of its obligation to providing devices or connections or services to public facilities.

Sec. 28-2-16. System construction requirements.

(1) Permit Application. Company shall be responsible for application costs and approval of all necessary permits required under the City's generally applicable ordinances pertaining to its work in Public Ways.

(2) Line Extension Policy. Company shall not have a line extension obligation until the first date by which Company is providing Cable Service to more than fifty percent (50%) of all Subscribers receiving facilities based Cable Service from both the Company and any other provider(s) of Cable Service within the City. At that time, the City, in its reasonable discretion and after meeting with Company, shall determine the timeframe to complete deployment to the remaining households in the City, including a density requirement that is the same or similar to the requirement of the incumbent franchised cable operator.

(3) City's Reservation of Rights. Neither the review of plans by the City nor the granting by City of any licenses, permits, certificates, authorizations, approvals, etc., shall be construed as a guarantee or warranty by the City of Company's CATV System. The Company shall not assert the fact that the City has performed any prior review of its plans or exercised any ministerial function in granting licenses, permits, certificates, authorizations, approvals, etc., as a defense against its obligations to indemnify and hold the City harmless pursuant to Section 9-711(3).

Sec. 28-2-17. Fees, rates and charges.

(1) To the extent authorized by law, the City reserves its rights to regulate rates and charges imposed by the Company (City received FCC Certification of Franchising Authority to Regulate Basic Cable rates on 10-26-93).

(2) Notice of Rate Change. Company shall notify the City and Subscribers of changes in rates as and to the extent required by 47 C.F.R. §76.1603.

Sec. 28-2-18. Conditions of public property occupancy.

(1) Approval of Proposed Construction. The Company shall first obtain the approval of the Director of Engineering before any construction is commenced on streets, alleys, sidewalks, driveways, Public Property or places of the City. Application for approval of construction shall be in a form specified by the Director of Engineering. The Company shall give the City reasonable written notice of proposed construction to allow coordination of all work between the City and the Company.

(2) Excavation Permits. Company shall not open or disturb the surface of a Public Way for any purpose without first having obtained a permit to do so in the manner provided by ordinance. Company may apply for a single permit for all excavation. The amount charged by City to Company for such permit shall be fair and reasonable.

(3) Changes Required by Public Improvements. Whenever the City undertakes any public improvement which affects CATV System facilities, it shall direct the Company to remove or relocate such equipment from the area of public improvement, at Company's expense. Specifically, Company shall, at its expense, protect, support, temporarily disconnect, relocate in or remove from a street, alley, sidewalk, driveway, or Public Property or place any property of the Company when required by the Director of Engineering by reason of traffic conditions, public safety, street vacation, street construction, change or establishment of street grade, installation or improvement of sewers, drains, water pipes, power lines, signal lines, tracks or any other type of structure, improvement or alteration of Public Property. If this public improvement also requires public utilities to remove or relocate their equipment and the City reimburses the utilities for their expenses incurred in the removal or relocation, the City shall reimburse the Company on the same terms and conditions it reimburses the utilities. If the utilities are reimbursed by some source other than the City, then City shall not be required to reimburse the Company for its expenses but will provide the Company with reasonable assistance in obtaining such reimbursement.

(4) Interference With or Hazard to Persons and Improvements. The Company's CATV System, including all wires, conduits, cables and other property and facilities, shall be located, constructed, installed and maintained so as not to endanger or unnecessarily interfere with the lives of Persons or with the usual and customary trade, traffic and travel upon the streets, alleys, sidewalks, driveways or Public Property and places of the City. The Company shall keep and maintain all of its property in good condition, order and repair and make it available for inspection at any reasonable time and upon reasonable notice. The City shall have the right to inspect and examine property located in the Public Way that is owned or used, in part or in whole, by the Company. Company shall not place poles or other equipment where they will interfere with the rights or reasonable convenience of adjoining property owners, or with any gas, electric, or telephone fixtures or with any water hydrants or mains. All poles or other fixtures placed in a street shall be placed in the Right-of-Way between the roadway and private property as specified by the Director of Engineering.

(5) Method of Installation. All wires, cables, amplifiers and other property shall be constructed and installed in an orderly and workmanlike manner. All cables and wires shall be installed parallel with existing telephone and electric wires whenever possible. Multiple cable configurations shall be arranged in parallel and bundled, in compliance with engineering and safety considerations and standards. Any portion of a CATV System that is installed by Company in a park or publicly owned open space area shall be installed underground in a manner approved by the City. All installations shall be underground in those areas of the City where public utilities providing telephone, cable, or electric utility facilities are underground at the time of installation. In areas where either telephone and electric utility facilities are above ground at the time of installation, the Company may install its facilities above ground provided that at such time as all those facilities are required to be placed underground, the Company shall likewise place its facilities underground without additional cost to the residents of the City except as provided under City ordinance.

(6) Protection of Facilities. Nothing contained in this Franchise Ordinance shall relieve any Person, company or corporation from liability arising out of the failure to exercise reasonable care to avoid injuring Company's facilities while performing any work connected with grading, regrading, or changing the line of any street or public place or with the construction or reconstruction of any utility facility, sewer or water system.

(7) Notice of City Improvements. The City shall give the Company reasonable notice of plans for street improvements where paving or resurfacing of a permanent nature is involved. The notice shall contain the nature and character of the improvements, the streets upon which the improvements are to be made, the extent of the improvements and the date of commencement of work. Notice shall be given a sufficient length of time in advance to permit Company to make any additions, alterations, or repairs to its facilities deemed necessary, considering seasonal working conditions in advance of the actual commencement of work.

(8) Compliance with Codes. All construction, installation, maintenance and operation of CATV Systems or facilities shall comply with the provisions of the National Electrical Safety Code as prepared by the National Bureau of Standards, the National Electrical Code of the National Board of Fire Underwriters, the Bell Telephone System Code of Pole Line construction, standards issued by the FCC or other federal or state regulatory agencies, and local zoning regulations. Every CATV System installed, constructed, maintained or operated in the City shall be designed, constructed, installed, maintained and operated as not to endanger or interfere with the safety of Persons or property in the City.

(9) Moving Wires. Upon request made at least five (5) days in advance by a holder of a building moving permit for the purpose of moving buildings, the Company shall temporarily raise, lower, or remove its wires. The holder of the building moving permit shall pay the reasonable cost of the requested service and may be required to pay that amount in advance.

(10) Trimming Trees. All trimming shall be done under the supervision and direction of the City and at the expense of the Company. The Company shall not remove any tree within any public place without the prior consent of the City. The Company shall be allowed to trim trees upon and overhanging streets, alleys, sidewalks, driveways and public grounds and places of the City to prevent the branches of the trees from coming in contact with the wires and cables of Company. Regardless of who performs the work, the Company shall be responsible and shall defend and hold City harmless for any and all damages to any tree or surrounding land as a result of the trimming or removal.

(11) Restoration to Prior Condition. In case of any disturbance of a Public Way, the Company shall, at its own cost and expense and in a manner approved by the City, replace and restore all paving, sidewalk, driveway, foundation or surface of any street or alley disturbed, in as good condition as before the work was commenced and in accordance with standards for such work set by the City. If, upon reasonable written notice, the Company fails promptly to restore any street or public place in accordance with this provision, the City shall have the right to put such street or public place back into good condition at the expense of the Company and the Company shall, upon demand, pay to the City and the cost of such work done or performed by the City.

(12) Interference With Reception. Company shall not allow its cable or other operations to interfere with the broadcast reception of Persons not served by Company.

(13) Record of Equipment and Facilities to be Maintained. The Company shall at all times make and keep at its business office complete and accurate plans and records showing the exact location of all CATV System equipment and facilities installed or in use in the City and make available such maps and records for the City's inspection promptly upon the City's reasonable request.

Sec. 28-2-19. Operation of the franchise/consumer service.

(1) **Consumer Service Policies.** The Company shall comply with applicable customer service standards set forth at 47 C.F.R. 76.309, or other applicable state or federal requirements. Nothing in the foregoing shall be construed as a waiver by the City of any rights it may have to adopt additional or modified consumer protection requirements to the extent authorized by federal or state law.

(2) **Consumer Complaints.** The Company shall designate a local contact Person for City to contact in case complaints about the Company, its practices or services are received by City staff. The Company is expected to normally resolve customer's complaints without City involvement, but when customer complaints are received by City staff and forwarded to the Company contact, the Company shall resolve the customer complaint and notify City staff of the outcome.

The Company shall provide a copy of pertinent Company customer service policies to the City upon request, for verification that Company policies have been followed in complaints received by the City.

(3) **Repairs and Maintenance.**

(a) **Maintenance of the Cable System.** The Company shall install and maintain the CATV System so as to avoid unreasonable or repetitive interruptions in service to Subscribers.

(b) **Interruption of Service.** Whenever it is necessary to interrupt service to make tests, repairs, adjustments or installations, the Company shall do so during a period of minimum Subscriber use. Unless an interruption is unforeseen and immediately necessary, the Company shall give reasonable notice to the Subscribers affected. All costs incurred in effecting such tests, repairs, adjustments or installations shall be borne by the Company unless otherwise provided by law, ordinance or regulation, or it is the result of Subscriber negligence.

(4) **Reports, Books and Records of Company.**

(a) **City's Right to Audit.** Upon request, not more than once every three (3) years, the City shall have reasonable access at mutually agreed-upon times to audit Company's accounting and financial records at Company's place of business upon reasonable notice as reasonably necessary to verify Company's compliance with its monetary obligations to the City under this Franchise Ordinance. Company shall have the right to observe any such audit proceedings. Such audit may not review records extending back further than three (3) years from the commencement of such audit.

(b) **Report on Operations.** Upon request, the Company shall prepare and furnish to the City at the time and in the form prescribed by the City Manager, such reports with respect to its CATV System operations, affairs, transactions or property in the City, as may be determined reasonably necessary to the City's regulation of the CATV System pursuant to this Franchise Ordinance.

(5) **Filing Communications with Regulatory Agencies.** As required by applicable law and otherwise upon request, Company shall provide to City a copy of any petition, application or similar communication that is submitted by the Company to the FCC, or other federal or state regulatory commission or agency having jurisdiction in respect to any matter affecting CATV System operations within the City.

(6) Reserved.

(7) Rules of the Company. The Company may promulgate such rules, regulations, terms and conditions governing the conduct of its business as may be reasonably necessary to enable it to exercise its rights and perform its obligations under the Franchise Ordinance and to assure an uninterrupted service to any and all of its customers; except that such rules, regulations, terms and conditions shall not be in conflict with the provisions of this Franchise Ordinance, other ordinances of the City, or the laws of the State of Minnesota or the United States. Upon request, a current copy of any such rules, regulations or terms and conditions shall be provided to the City.

(8) Service Contract. If a written service contract is used by a Company in its dealings with Subscribers, the Company shall provide a copy of such form contract to the City upon request.

(9) Reserved.

(10) Reserved.

(11) Preferential or Discriminatory Practices Prohibited.

(a) The Company shall establish and maintain an Equal Employment and Affirmative Action Program providing that no individual shall be discriminated against with respect to compensation, terms, conditions or other privileges or employment because of race, color, creed, religion, sex, national or ethnic origin, physical condition, age, affectional preference or marital status. The Company's Equal Employment and Affirmative Action Program shall, upon request, be provided to the City Manager and shall be in compliance with current and future policies established in the City's Affirmative Action Program, as well as with Section 635 of the Cable Act of 1984. The Company shall strictly adhere to the Equal Employment and Affirmative Action Program it files.

(b) The Company shall comply with or exceed all federal, state and local laws and regulations relating to equal employment opportunity and non-discrimination.

(12) Subscriber Privacy. At all times, Company shall abide by the Subscriber privacy provisions in applicable federal and state laws including 47 U.S.C. §551.

(13) Surveys. Company shall provide the City with the results of any non-confidential, non-privileged survey of Subscribers in the City regarding Cable Service or the operation of the CATV System.

(14) Periodic Review. The City may request a State-of-the-Art review of not more than once during the initial five (5) year term of this Franchise Ordinance. In conducting a State-of-the-Art review, the City shall undertake the following process:

(a) The City and the Company shall undertake a review of the then existing CATV System. This review shall, at a minimum, take into account the following:

- (i) Characteristics of the existing System;
- (ii) The State-of-the-Art;
- (iii) Additional benefits provided to customers by the State-of-the-Art;
- (iv) The market place demand for the State-of-the-Art;
- (v) The use of a need for additional PEG access channels; and

- (vi) The financial feasibility of the State-of-the-Art taking into account associated rate increases, and the premature retirement of assets.
- (vii) Other technologies present in the market place.

(b) The City shall hold a public hearing to enable the general public and Company to comment and to present evidence.

(c) As a result of any review based on this section, the City and Company may enter into good faith negotiations to amend this Franchise as necessary to provide system improvements on a schedule that takes into account the impact on rates, recovery of costs, benefit to Subscribers, and other factors agreed upon.

(d) Notwithstanding anything to the contrary, City may not undertake a State of the Art review at any time the Company is deemed subject to effective competition pursuant to then applicable state or federal law.

Sec. 28-2-20. Rights reserved; resolution of disputes.

(1) No Impairment of Eminent Domain. Nothing herein shall be construed to contract away, modify or abridge, either for a term or in perpetuity, the City’s rights to eminent domain, including any right of the city to acquire the property of the Company through the exercise of the right of eminent domain.

(2) Administration of Franchise Ordinance. Subject to the control and direction of the Council, the City Manager of City, or City Manager’s designee, shall be the designated administrator responsible for the continuing administration of the Franchise Ordinance.

(3) Resolution of Disputes and Appeal Procedures. Prior to taking any enforcement action authorized by Section 28-2-21, the City shall contact the Company’s designated representative and attempt to resolve the dispute.

(4) City’s Transfer of Functions. Any right or power conferred, or duly imposed upon any elected official, officer, employee, department, or board of the City shall be subject to transfer by the City to any other elected official, officer, employee, department or board to the extent permitted by applicable law.

Sec. 28-2-21. Enforcement.

(1) Failure to Enforce Provisions. The Company shall not be excused from complying with any of the terms and conditions of the Franchise Ordinance by any failure of the City upon one or more occasions to insist upon or to seek compliance with any such terms or conditions.

(2) Penalties. In addition to any other remedies provided in this Franchise Ordinance, penalties for violations of this Franchise Ordinance are set forth below. As a result of any acts or omissions by Company pursuant to the Franchise Ordinance, City may charge to and collect from the Company, by drawing on the Letter of Credit set forth in Section 28-2-10, or otherwise the following penalties:

(a) For failure to provide, after ten (10) days’ notice, data, documents, reports or information or to cooperate with the City during a renewal process or CATV System evaluation or in the conduct of City’s Franchise Ordinance enforcement and administration functions, the penalty shall be Fifty Dollars (\$50.00) per day.

(b) For failure to comply with any of the provisions of this Franchise Ordinance after ten (10) days' notice, for which a penalty is not otherwise specifically provided, the penalty shall be Fifty Dollars (\$50.00) per day.

(c) For failure to test, analyze and report on the performance of the CATV System following a request by the City as set forth in this Franchise Ordinance and after ten (10) days' notice, the penalty shall be Fifty Dollars (\$50.00) per day.

(d) For failure of Company to comply with the construction, operation or maintenance standards thirty (30) days following notice from the City, the penalty shall be Two Hundred Dollars (\$200.00) per day.

(e) For failure to comply with all conditions of City permits to disturb streets, fix streets, or other terms or conditions of City, the penalty shall be Fifty Dollars (\$50.00) per day.

Nothing herein shall prevent the parties from mutually agreeing to extend the ten (10) day periods referenced above.

(3) Notice of Violation. In the event that the City believes that the Company has not complied with any material term of the Franchise Ordinance, the City shall informally discuss the matter with Company. If these discussions do not lead to resolution of the problem, the City shall notify the Company in writing of the exact nature of such alleged noncompliance.

(4) The Company's Right to Cure or Respond. The Company shall have thirty (30) days from receipt of the notice described in subsection (2) to: (a) respond to the City, contesting the assertion of such noncompliance, or (b) cure such default, or (c) in the event that, by the nature of such default, it cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected date that they will be completed.

(5) Public Hearing. In the event that the Company fails to respond to the notice described in subsection (3) pursuant to the procedures set forth in subsection (4), or in the event that the alleged default is not remedied within thirty (30) days or the date projected pursuant to (3)(c) above, if it intends to continue its investigation into the default, then the City shall schedule a public hearing. The City shall provide the Company at least ten (10) days prior written notice of such hearing, which specifies the time, place and purpose of such hearing, and provide the Company the opportunity to be heard. Within thirty (30) days of the end of such hearing, the City shall issue a written decision regarding whether a material default of the Franchise Ordinance has been established by clear and convincing evidence in the record.

(6) Enforcement. Subject to applicable federal and state law, in the event the City, after the hearing set forth in subsection (5), determines that the Company is in material default of any provision of the Franchise Ordinance, the City may:

(a) Impose the penalties specified above and if prompt payment of the penalties is not made by the Company, the City may draw on the letter of credit.

(b) Commence an action at law for monetary damages or seek other equitable relief;
or

(c) In the case of repeated or ongoing substantial non-compliance with a material term or terms of the Franchise Ordinance, seek to revoke the grant of the Franchise Ordinance pursuant to this Franchise Ordinance in accordance with subsection (7).

(7) **Revocation.** Should the City seek to revoke the grant of the Franchise Ordinance after following the procedures set forth in subsections (3) through (6) above, the City shall give written notice to the Company of its intent. The notice shall set forth the exact nature of the repeated or ongoing substantial noncompliance with a material term or terms of the Franchise Ordinance. The Company shall have ninety (90) days from such notice to object in writing and to state its reasons for such objection. In the event the City has not received a satisfactory response from the Company, it may then seek termination of the franchise Ordinance at a public hearing before the City Council. The City shall cause to be served upon the Company, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise Ordinance.

At the designated hearing, Company shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce relevant evidence, to require the production of evidence, to compel the relevant testimony of the officials, agents, employees or consultants of the City, to compel the testimony of other Persons as permitted by law, and to question witnesses. A complete verbatim record and transcript shall be made of such hearing.

Following the hearing, the City Council shall determine whether or not the Franchise Ordinance shall be revoked. If the City Council determines that the Franchise Ordinance shall be revoked, the City Council shall promptly provide Company with its decision in writing. The Company may appeal such determination of the City Council to an appropriate court which shall have the power to review the decision of the City Council de novo. Company shall be entitled to such relief as the court finds appropriate.

(8) **Force Majeure.** The Company shall not be held in default under, or in noncompliance with, the provisions of the Franchise Ordinance, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Company to anticipate and control including, acts of God, insurrection, war, riot, vandalism, strikes, sabotage, or any other event beyond the reasonable control of Company. This provision includes work delays caused by waiting for utility providers to service or monitor their utility poles to which the Company's CATV System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

Furthermore, the parties hereby agree that it is not the City's intention to subject the Company to penalties, fines, forfeitures or revocation of the Franchise Ordinance for violations of the Franchise Ordinance where the violation was a good faith error that resulted in no or minimal negative impact on the Subscribers within the Franchise Area.

Sec. 28-2-22. Renewal.

The process for renewing this Franchise Ordinance shall be as provided under 47 U.S.C. § 546 and other applicable federal and state law.

Sec. 28-2-23. Removal after termination or revocation.

(1) At the expiration of the term for which this Franchise Ordinance is granted, or upon its revocation or termination, as provided for herein, and final determination of non-renewal, City shall have the right to require Company to remove, at Company's expense, all or any portion of the CATV System used exclusively for the provision of Cable Service from all streets and Public Property within City. In so removing the CATV System, Company shall refill and compact at its own expense any excavation that shall be made by it and shall leave all streets and Public Property

in as good a condition as that prevailing prior to Company's removal of the CATV System, and without affecting, altering or disturbing in any way electric telephone or other utility cable, wires or attachments. City shall have the right to inspect and approve the condition of such streets and Public Property after removal. The letter of credit, bonds, insurance, indemnity and penalty provisions of the Franchise Ordinance shall remain in full force and effect during the entire term of removal.

(2) If Company has failed to commence removal of System as set forth in Section 28-2-23(1), or such part thereof as was designated by City, within thirty (30) days after written notice of City's demand for removal is given, or if Company has failed to complete such removal within one year after written notice of City's demand for removal is given, City shall have the right to exercise any of the following options:

(a) Declare all right, title and interest to the CATV System to be in City with all rights of ownership including, but not limited to, the right to operate the CATV System or to transfer the CATV System to another for operation.

(b) Declare the CATV System abandoned and cause the CATV System or such part thereof, as City shall designate, to be removed at the expense of the Company. The cost of said removal shall be recoverable from the letter of credit, bonds, insurance, indemnification and penalties provided for in this Franchise Ordinance or from Company directly as liquidated damages.

Sec. 28-2-24. Expiration or revocation of franchise.

(1) Expiration; Extended Operation. Upon the expiration of a Franchise Ordinance, the City may by resolution direct the Company to operate the Franchise Ordinance for an extended period of not to exceed six (6) months after the date of expiration. The Company agrees to comply with such a direction. All provisions of the Franchise Ordinance shall continue to apply to operations during an extension period. The City shall serve written notice at the Company's business office of intent to extend under this section at least thirty (30) days prior to expiration. Nothing in the foregoing affects Company's rights to a franchise renewal under 47 U.S.C. §546.

(2) Injunctive Relief. Pending final disposition of proceedings to revoke a Franchise Ordinance or during a period of extension of a Franchise Ordinance after expiration, the City may obtain injunctive relief to obtain compliance with the provisions of the Franchise Ordinance and maintain the continuity of service to Subscribers. Such relief shall be in addition to and not in lieu of other remedies available to the City. If the City prevails, the costs shall be borne by Company including reasonable attorneys' fees, costs and disbursements.

(3) Right of City to Purchase; Disposition of Facilities. Upon expiration of the terms of the Franchise Ordinance, or upon a revocation or termination of this Franchise Ordinance, or if renewal of this Franchise Ordinance is denied, the City shall have the right to acquire the facilities used exclusively for CATV System. Any such acquisition shall be at fair market value, determined on the basis of the CATV System as a going concern but with no value allocated to the Franchise Ordinance itself. If the Franchise Ordinance held by Company is revoked or terminated for cause and the City determines to acquire ownership of the CATV System or effects a transfer of ownership of the CATV System to another Person, any such acquisition or transfer shall be at an equitable price.

(4) Restoration of Property Upon Removal. In removing its plants, structures and equipment, the Company shall refill at its own expense, any excavation that shall be made by it and shall leave all public ways and places in as good condition as that prevailing prior to the Company's removal of its equipment and appliances, without affecting the electric or telephone cables, wires or

attachments. The Director of Engineering shall inspect and approve the condition of the public ways and public places and cables, wires, attachments and poles after removal. Liability insurance, indemnification and the security for performance required by this Franchise Ordinance shall continue in full force and effect during the period of removal.

The City shall have a right to all available remedies, including drawing on Company's letter of credit required by Section 28-2-10 of this Franchise Ordinance, in order to enforce the requirements of this section.

Sec. 28-2-25. Abandonment.

Company shall not abandon the CATV System or any portion thereof without having first given three (3) months' written notice to City. Abandonment shall not occur unless first approved by the City after reasonable opportunity to review. Upon showing by Company of need for abandonment and an opportunity for the City to determine other areas for the continuity of service, the City shall evaluate any damage, claim or loss that may be applicable as a consequence of such abandonment. In order to accomplish this, the City shall conduct a public hearing after providing reasonable notice to all affected Persons as to the date, time and place of the hearing. Thereafter, before abandonment occurs, the City shall notify the Company of its determination and any Person, including City, entitled to damages and the amount and basis therefore. Company shall not abandon the CATV System or any portion thereof without compensating City for damages resulting to it from the abandonment.

Sec. 28-2-26. Unauthorized connections.

It shall be unlawful for any Person to make an unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise, with any part of the franchised CATV System within the City for the purpose of taking or receiving television signals, radio signals, pictures, programs, sound, or any other service provided by the Company.

Sec. 28-2-27. Severability.

If any section, subsection, sentence, paragraph, term, or provision of this Franchise Ordinance is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other section, subsection, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of this Franchise Ordinance.

Sec. 28-2-28. Work performed by others.

(1) Upon request, Company shall promptly give notice to City specifying the names and addresses of any other entity, other than Company, which performs services pursuant to this Franchise Ordinance, provided, however, that all provisions of this Franchise Ordinance remain the responsibility of Company.

(2) All provisions of this Franchise Ordinance shall apply to any subcontractor or others performing any work or services pursuant to the provisions of this Franchise Ordinance.

Sec. 28-2-29. Administration and advisory body.

(1) Administrator. The City Manager or the City Manager's designee shall be responsible for the continuing administration of this Franchise Ordinance. The administrator may be changed by City from time to time by written notice given to Company.

(2) Advisory Body. City may appoint an advisory body to monitor the performance of Company in executing the provisions of this Franchise Ordinance. The advisory body shall perform all functions required of it by the Council and applicable laws, ordinances, rules and regulations.

(3) Delegation of Authority by City.

(a) City reserves the right to delegate and re-delegate from time to time any of its rights or obligations under this Franchise Ordinance to anybody or organization.

(b) Any delegation by City shall be effective upon written notice by City or Company of such delegation.

(c) Upon receipt of notice by Company of City's delegation, Company shall be bound by all terms and conditions of the delegation not in conflict with this Franchise Ordinance.

(d) Any such delegation, revocation or re-delegation, no matter how often made, shall not be deemed an amendment to this Franchise Ordinance or require any consent of Company.

Sec. 28-2-30. Time of acceptance; exhibits.

(1) Company shall have thirty (30) days from the last date of adoption of this Franchise Ordinance to accept this Franchise Ordinance in form and substance acceptable to City, unless the time for acceptance is extended by City. If this Franchise Ordinance is not accepted by Company in accordance with the terms of this section, this Franchise Ordinance shall be null and void and without effect. The City's "Notice of Intent to Consider an Application for a Franchise" ("Notice") provided, consistent with Minn. Stat. 238.081 subd. 8, that applicants would be required to reimburse the City for all necessary costs of processing a cable communications franchise. Company submitted an application fee with its application to the City. The Notice further provided that any unused portion of the application fee would be returned and any additional fees required to process the application and franchise, beyond the application fee, would be assessed to the successful applicant. The Company shall therefore submit to the City at the time of acceptance of this Franchise, a check made payable to the City of St. Louis Park, Minnesota for all additional fees and costs incurred by the City. Within thirty (30) days of City Council approval, the City shall provide Company with a letter specifying such additional costs. The City shall provide Company with a letter specifying such additional costs following approval of this Franchise by the City Council.

(2) Upon acceptance of this Franchise Ordinance, Company and City shall be bound by all the terms and conditions contained herein. This Franchise Ordinance constitutes the entire agreement between the Company and the City and supersedes all other prior understandings and agreements oral or written. Any amendments to this Franchise Ordinance shall be mutually agreed to in writing by the parties.

(3) All of the attached exhibits are a part of this Franchise Ordinance and each is specifically incorporated herein by reference. The exhibits are as follows:

Exhibit A: List of City and school district buildings at which Company is capable of providing free service as set forth in Section 28-2-15(4)(a).

Exhibit B: Indemnity Agreement.

Ordinance No. 2482-15, 11-16-15