City of Eden Prairie, Minnesota

Ordinance No. 3-2016 Granting a Cable Television Franchise

to

Qwest Broadband Services, Inc. d/b/a CenturyLink

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Prepared by:

BRIAN T. GROGAN, ESQ.
Moss & Barnett
A Professional Association
150 South Fifth Street, Suite 1200
Minneapolis, MN 55402
(612) 877-5340

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CITY OF EDEN PRAIRIE
HENNEPIN COUNTY, MINNESOTA

ORDINANCE NO. 3-2016

AN ORDINANCE GRANTING A FRANCHISE TO QWEST BROADBAND SERVICES, INC., D/B/A CENTURYLINK TO OPERATE AND MAINTAIN A CABLE SYSTEM AND PROVIDE CABLE SERVICES IN THE CITY OF EDEN PRAIRIE; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE; PROVIDING FOR CITY REGULATION AND ADMINISTRATION OF THE CABLE SYSTEM AND CABLE SERVICES.

RECITALS

The City of Eden Prairie, Minnesota ("City") pursuant to applicable federal and state law is authorized to grant one or more nonexclusive cable television franchises to construct, operate, maintain and reconstruct cable television systems within the City limits.

Qwest Broadband Services, Inc., d/b/a CenturyLink ("Grantee") seeks a competitive cable television franchise with the City.

Negotiations between Grantee and the City have been completed in accordance with the guidelines established by the City Code, Minnesota Statutes Chapter 238 and the Cable Act (47 U.S.C. Section 546).

The City reviewed the legal, technical and financial qualifications of Grantee and, after a properly noticed public hearing, determined that it is in the best interest of the City and its residents to grant this competitive cable television franchise to Grantee.

NOW, THEREFORE, THE CITY OF EDEN PRAIRIE DOES ORDAIN that a franchise is hereby granted to Qwest Broadband Services, Inc. to operate and maintain a Cable System and provide Cable Services in the City upon the following terms and conditions:

SECTION 1
DEFINITIONS

For the purpose of this Franchise, the following, terms, phrases, words, derivations and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular number include the plural number. In the event the meaning of any word or phrase not defined herein is uncertain, the definitions contained in applicable local, State or Federal law shall apply.

"Access Channels" means any channel or portion of a channel utilized for public, educational or governmental programming.

"Affiliate" shall mean any Person controlling, controlled by or under common control of Grantee.

"Applicable Laws" means any law, statute, charter, ordinance, rule, regulation, code, license, certificate, franchise, permit, writ, ruling, award, executive order, directive, requirement, injunction (whether temporary, preliminary or permanent), judgment, decree or other order issued, executed, entered or deemed applicable to Grantee by any governmental authority of competent jurisdiction.

"Basic Cable Service" means any service tier which includes the lawful retransmission of local television broadcast and shall include the public, educational and governmental access channels. Basic Cable Service as defined herein shall be the definition set forth in 47 U.S.C. § 522(3).

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

"Cable Service" shall mean (a) the one-way transmission to Subscribers of (i) Video Programming or (ii) Other Programming Service, and b) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service. For the purposes of this definition, "video programming" is programming provided by, or generally considered comparable to programming provided by a television broadcast station; and, "other programming service" is information that a cable operator makes available to all Subscribers generally.

"Cable System" or "System" shall have the meaning specified for "Cable System" in the Cable Act. Unless otherwise specified, it shall in this document refer to the Cable System utilized by the Grantee in the City under this Franchise.

"Channel" means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel as defined by the FCC by regulation.

"City" shall mean the City of Eden Prairie, a municipal corporation in the State of Minnesota.

"City Code" means the Municipal Code of the City of Eden Prairie, Minnesota, as may be amended from time to time.

"Commission" means the Southwest Suburban Cable Communications Commission consisting of the cities of Edina, Eden Prairie, Hopkins, Minnetonka and Richfield, Minnesota.

"Connection" means the attachment of the Drop to the television set or Set Top Box of the Subscriber.

"Council" shall mean the governing body of the City.

"Day" unless otherwise specified shall mean a calendar day.

"Drop" shall mean the cable that connects the Subscriber terminal to the nearest feeder cable of the cable.

"Effective Date" shall mean February 11, 2016.

"Expanded Basic Service" means all Subscriber services other than Basic Cable Service provided by the Grantee covered by a regular monthly charge, but not including optional programming offered on a pay-per-channel or pay-per-view basis.

"FCC" means the Federal Communications Commission, or a designated representative.

"Franchise" shall mean the right granted by this Ordinance and conditioned as set forth herein.

"Franchise Area" means the entire geographic area within the City as it is now constituted or may in the future be constituted.

"Franchise Fee" shall mean the fee assessed by the City to Grantee, in consideration of Grantee's right to operate the Cable System within the City's Streets and rights of way, determined in amount as a percentage of Grantee's Gross Revenues and limited to the maximum percentage allowed for such assessment by federal law. The term Franchise Fee does not include the exceptions noted in 47 U.S.C. §542(g)(2)(A-E).

"GAAP" means generally accepted accounting principles as promulgated and defined by the Financial Accounting Standards Board ("FASB"), Emerging Issues Task Force ("EITF") and/or the U.S. Securities and Exchange Commission ("SEC").

"Grantee" means Qwest Broadband Services, Inc., d/b/a CenturyLink.

"Gross Revenues" means any and all compensation in whatever form, from any source, directly or indirectly earned by Grantee or any Affiliate of Grantee or any other Person who would constitute a cable operator of the Cable System under the Cable Act, derived from the operation of the Cable System to provide Cable Service within the City. Gross Revenues include, by way of illustration and not limitation, monthly fees charged Subscribers for Cable Services including Basic Cable Service, any expanded tiers of Cable Service, optional premium or digital services; pay-per-view services; Pay Services, installation, disconnection, reconnection and change-in-service fees, Leased Access Channel fees, all Cable Service lease payments from the Cable System to provide Cable Services in the City, late fees and administrative fees, payments or other consideration received by Grantee from programmers for carriage of programming on the Cable System and accounted for as revenue under GAAP; revenues from rentals or sales of Set Top Boxes or other Cable System equipment; advertising sales revenues booked in accordance with Applicable Law and GAAP; revenues from program guides and electronic

guides, additional outlet fees, Franchise Fees required by this Franchise, revenue from Interactive Services to the extent they are considered Cable Services under Applicable Law; revenue from the sale or carriage of other Cable Services, revenues from home shopping and other revenue-sharing arrangements. Copyright fees or other license fees paid by Grantee shall not be subtracted from Gross Revenues for purposes of calculating Franchise Fees. Gross Revenues shall include revenue received by any entity other than Grantee where necessary to prevent evasion or avoidance of the obligation under this Franchise to pay the Franchise Fees.

Gross Revenues shall not include any taxes on services furnished by Grantee, which taxes are imposed directly on a Subscriber or user by a city, county, state or other governmental unit, and collected by Grantee for such entity. The Franchise Fee is not such a tax. Gross Revenues shall not include amounts which cannot be collected by Grantee and are identified as bad debt; provided that if amounts previously representing bad debt are collected, then those amounts shall be included in Gross Revenues for the period in which they are collected. Gross Revenues shall not include payments for PEG Access capital support. The City acknowledges and accepts that Grantee shall maintain its books and records in accordance with GAAP.

"Interactive Services" are those services provided to Subscribers whereby the Subscriber either (a) both receives information consisting of either television or other signal and transmits signals generated by the Subscriber or equipment under his/her control for the purpose of selecting what information shall be transmitted to the Subscriber or for any other purpose or (b) transmits signals to any other location for any purpose.

"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.

"Minnesota Cable Communications Act" means the provisions of Minnesota law governing the requirements for a cable television franchise as set forth in Minn. Stat. § 238, et. seq., as amended.

"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.

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

"Normal Operating Conditions" means those Service conditions which are within the control of Grantee. Those conditions which are not within the control of Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the

control of Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System.

"Pay Service" means programming (such as certain on-demand movie channels or pay-per-view programs) offered individually to Subscribers on a per-channel, per-program or per-event basis.

"PEG" means public, educational and governmental.

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

"QC" means Qwest Corporation, wholly owned subsidiary of CenturyLink, Inc. and an Affiliate of Grantee.

"Qualified Living Unit" means a Living Unit which meets the minimum technical qualifications defined by Grantee for the provision of Cable Service. A Living Unit receiving a minimum of 25Mbps downstream will generally be capable of receiving Cable Service subject to Grantee performing certain network grooming and conditioning.

"Set Top Box" means an electronic device, which converts signals to a frequency not susceptible to interference within the television receiver of a Subscriber, and by an appropriate Channel selector also permits a Subscriber to view all signals included in the Basic Cable Service tier delivered at designated converter dial locations.

"Street" shall mean the surface of and the space above and below any public Street, road, highway, freeway, lane, path, public way, alley, court, sidewalk, boulevard, parkway, drive or any easement or right-of-way now or hereafter held by City which shall, within its proper use and meaning in the sole opinion of City, entitle Grantee to the use thereof for the purpose of installing or transmitting over poles, wires, cables, conductors, ducts, conduits, vaults, man-holes, amplifiers, appliances, attachments and other property as may be ordinarily necessary and pertinent to a Cable System.

"Subscriber" means a Person who lawfully receives Cable Service from Grantee.

"Wireline MVPD" means a multichannel video programming distributor that utilizes the Streets to install cable or fiber and is engaged in the business of making available for purchase, by Subscribers, multiple Channels of video programming in the City.

SECTION 2
FRANCHISE

2.1 **Grant of Franchise.**

(a) The City hereby authorizes Grantee to occupy or use the City's Streets subject to: 1) the provisions of this non-exclusive Franchise to provide Cable Service within the City; and 2) all applicable provisions of the City Code. Said Franchise shall constitute both a right and an obligation to provide Cable Services as required by the provisions of this Franchise. Nothing in this Franchise shall be construed to prohibit Grantee from: (1) providing services other than Cable Services to the extent not prohibited by Applicable Law; or (2) challenging any exercise of the City's legislative or regulatory authority in an appropriate forum. The City hereby reserves all of its rights to regulate such other services to the extent not prohibited by Applicable Law and no provision herein shall be construed to limit or give up any right to regulate.

(b) Grantee promises and guarantees, as a condition of exercising the privileges granted by this Franchise, that any Affiliated Entity of the Grantee involved in the offering of Cable Service in the City, or directly involved in the ownership, management or operation of the Cable System in the City, shall also comply with all obligations of this Franchise. However, the City and Grantee 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 Grantee 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 Grantee constructs and installs facilities in the Rights-of-Way, such installation will be subject to the terms and conditions contained in this Franchise. Grantee is responsible for all provisions in this Franchise related to: 1) its offering of Cable Services in the City; and 2) the operation of the Cable System regardless of what entity owns or constructs the facilities used to provide the Cable Service. The City and Grantee 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 Grantee to ensure such compliance. Failure by Grantee to ensure QC's or any other Affiliate's compliance with Applicable Laws, rules, and regulations, shall be deemed a material breach of this Franchise by Grantee.

2.2 **Reservation of Authority.** The Grantee specifically agrees to comply with the lawful provisions of the City Code and applicable regulations of the City. Subject to the police power exception below, in the event of a conflict between A) the lawful provisions of the City Code or applicable regulations of the City and B) this Franchise, the express provisions of this Franchise shall govern. Subject to express federal and state preemption, the material terms and conditions contained in this Franchise may not be unilaterally altered by the City through subsequent amendments to the City Code, ordinances or any regulation of City, except in the lawful exercise of City's police power. Grantee acknowledges that the City may modify its regulatory policies by lawful exercise of the City's police powers throughout the term of this Franchise. Grantee agrees to comply with such lawful modifications to the City Code; however, Grantee reserves all rights it may have to challenge such modifications to the City Code whether arising in contract or at law. The City reserves all of its rights and defenses to such challenges whether arising in contract or at law. Nothing in this Franchise shall (A) abrogate the right of the

City to perform any public works or public improvements of any description, (B) be construed as a waiver of any codes or ordinances of general applicability promulgated by the City, or (C) be construed as a waiver or release of the rights of the City in and to the Streets.

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

2.4 **Franchise Area**. The Grantee is hereby authorized to provide Cable Services over a Cable 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 Grantee is not the first entrant into the wireline video market in the City. The Grantee acknowledges that the City desires wireline competition throughout the entire City so all residents may receive the benefits of competitive Cable Services. Grantee aspires to provide Cable Service to all households within the City by the end of the five year (5) term of this Franchise. Grantee 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.

2.5 **Franchise Nonexclusive**. The Franchise granted herein shall be nonexclusive. The City specifically reserves the right to grant, at any time, such additional franchises for a Cable System as it deems appropriate provided, however, such additional grants shall not operate to materially modify, revoke, or terminate any rights previously granted to Grantee other than as described in Section 17.17. The grant of any additional franchise shall not of itself be deemed to constitute a modification, revocation, or termination of rights previously granted to Grantee. Any additional cable franchise grants shall comply with Minn. Stat. Section 238.08 and any other applicable federal level playing field requirements.

2.6 **Build Out.**

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

(b) Quarterly Meetings. In order to permit the Commission to monitor and enforce the provisions of this section and other provisions of this Franchise, the Grantee shall, upon demand, promptly make available to the Commission maps and other documentation showing exactly where within the City the Grantee is currently providing Cable Service. Grantee shall meet with the Commission, not less than once quarterly, to

demonstrate Grantee'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 Grantee 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 Commission and the City to monitor and enforce the provisions of this section and other provisions of this Franchise, the Grantee shall, commencing April 15, 2016, and continuing throughout the term of this Franchise, meet quarterly with the Commission and make available to the Commission the following information:

(i) The total number of Living Units throughout the City;

(ii) The geographic area within the City where the Grantee 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 Services at commercially-zoned parcels;

(iii) The actual number of Qualified Living Units capable of receiving Cable Service from Grantee through FTTH and FTTN; and

(iv) A list of the public buildings and educational institutions capable of receiving Cable Service from the Grantee (see list attached hereto as Exhibit A).

(c) 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 2.6(a) herein, Grantee is actually serving twenty seven and one-half percent (27.5%) of the households capable of receiving Cable Service, then Grantee 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 Grantee agrees to serve within two (2) years from the quarterly meeting; provided, however, the Grantee shall make its best efforts to complete such deployment within a shorter period of time. For example, if, at a quarterly meeting with the Commission, Grantee 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 Grantee 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 seventy-five percent (75%) of the total households). This additional build-out based on market success shall continue until every household in the City is served.

(d) Nondiscrimination. Grantee 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 Grantee is capable of providing Cable Service. Grantee shall not arbitrarily refuse to provide Cable Services to any Person or in any location where the Grantee 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. Grantee 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 Grantee base decisions about construction or maintenance of its Cable System or facilities based upon the income level of residents of the local area in which such group resides. Grantee shall provide such service at non-discriminatory monthly rates for residential Subscribers, consistent with Applicable Law. Grantee 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.

(e) Standard Installation. Grantee shall provide Cable Services at its standard installation 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 Grantee or receipt by Grantee of a verified verbal or written request.

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

2.7 **Periodic Public Review of Franchise**. Within sixty (60) Days of the third anniversary of the Effective Date of this Franchise or third annual anniversary of any extension of the Franchise term, the City may conduct a public review of the Franchise. The purpose of any such review shall be to ensure, with the benefit of full opportunity for public comment, that the Grantee continues to effectively serve the public in the light of new developments in cable law and regulation, cable technology, cable company performance with the requirements of this Franchise, local regulatory environment, community needs and interests, and other such factors. Both the City and Grantee agree to make a full and good faith effort to participate in the review. So long as Grantee receives reasonable notice, Grantee shall participate in the review process and shall fully cooperate. The review shall not operate to modify or change any provision of this Franchise without mutual written consent in accordance with Section 17.6 of this Franchise.

2.8 **Transfer of Ownership**.

(a) No sale, transfer, assignment or "fundamental corporate change", as defined in Minn. Stat. § 238.083, of this Franchise shall take place until the parties to the sale, transfer, or fundamental corporate change files a written request with City for its approval, provided, however, that said approval shall not be required where Grantee grants a security interest in its Franchise and assets to secure an indebtedness.

(b) City shall have thirty (30) Days from the time of the request to reply in writing and indicate approval of the request or its determination that a public hearing is

necessary due to potential adverse affect on Grantee's Subscribers resulting from the sale or transfer. Such approval or determination shall be expressed in writing within thirty (30) Days of receipt of said request, or the request shall be deemed approved as a matter of law.

(c) If a public hearing is deemed necessary pursuant to (b) above, such hearing shall be commenced within thirty (30) Days of such determination and notice of any such hearing shall be given in accordance with local law or fourteen (14) Days prior to the hearing by publishing notice thereof once in a newspaper of general circulation in City. The notice shall contain the date, time and place of the hearing and shall briefly state the substance of the action to be considered by City.

(d) Within thirty (30) Days after the closing of the public hearing, City shall approve or deny in writing the sale or transfer request. City shall set forth in writing with particularity its reason(s) for denying approval. City shall not unreasonably withhold its approval.

(e) The parties to the sale or transfer of the Franchise only, without the inclusion of the System in which substantial construction has commenced, shall establish that the sale or transfer of only the Franchise will be in the public interest.

(f) Any sale or transfer of stock in Grantee so as to create a new controlling interest in the System shall be subject to the requirements of this Section 2.8. The term "controlling interest" as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.

(g) In no event shall a transfer or assignment of ownership or control be approved without the transferee becoming a signatory to this Franchise and assuming all rights and obligations thereunder, and assuming all other rights and obligations of the transferor to the City.

(h) In the event of any proposed sale or assignment pursuant to paragraph (a) of this section, City shall have the right of first refusal of any bona fide offer to purchase only the Cable System. Bona fide offer, as used in this section, means an offer received by the Grantee which it intends to accept subject to City's rights under this section. This written offer must be conveyed to City along with the Grantee's written acceptance of the offer contingent upon the rights of City provided for in this section. City shall be deemed to have waived its rights under this paragraph (h) in the following circumstances:

(i) If it does not indicate to Grantee in writing, within thirty (30) Days of notice of a proposed sale or assignment, its intention to exercise its right of purchase; or

(ii) It approves the assignment or sale of the Franchise as provided within this section

(i) A transfer of the Franchise shall not include a transfer of ownership or other interest in Grantee to the parent of Grantee or to another Affiliate of Grantee; transfer of an interest in the Franchise or the rights held by Grantee under the Franchise to the parent of Grantee or to another Affiliate of Grantee; any action which is the result of a merger of the parent of Grantee; or any action which is the result of a merger of another Affiliate of Grantee. Nothing in this Section 2.8 (i) shall be read to serve as a waiver of Grantee's obligation to obtain the City's advance written consent to any proposed transfer that constitutes a change in the "controlling interest" of the Grantee as set forth in 2.8 (f) herein and Minn. Stat. Section 238.083.

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

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

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

(c) invite additional franchise applications or proposals;

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

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

2.10 **Right to Require Removal of Property**. At the expiration of the term for which the Franchise is granted provided no renewal is granted, or upon its forfeiture or revocation as provided for herein, the City shall have the right to require Grantee to remove at Grantee's own expense all or any part of the Cable System, used exclusively to provide Cable Service, from all Streets and public ways within the Franchise Area within a reasonable time. If Grantee fails to do so, the City may perform the work and collect the cost thereof from Grantee.

2.11 **Continuity of Service Mandatory**. It shall be the right of all Subscribers to receive all available services insofar as their financial and other obligations to Grantee are honored. In the event that Grantee elects to overbuild, rebuild, modify, or sell the system, or the City revokes or fails to renew the Franchise, Grantee shall make its best effort to ensure that all Subscribers receive continuous uninterrupted service, regardless of the circumstances, during the lifetime of the Franchise. In the event of expiration, purchase, lease-purchase, condemnation, acquisition, taking over or holding of plant and equipment, sale, lease, or other transfer to any other Person, including any other grantee of a cable communications franchise, the current Grantee shall cooperate fully to operate the system in accordance with the terms and conditions of this Franchise for a temporary period sufficient in length to maintain continuity of service to all Subscribers.

SECTION 3
OPERATION IN STREETS AND RIGHTS-OF-WAY

3.1 **Use of Streets.**

(a) Grantee may, subject to the terms of this Franchise, erect, install, construct, repair, replace, reconstruct and retain in, on, over, under, upon, across and along the Streets within the City such lines, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of a Cable System within the City. Without limiting the foregoing and subject to Section 2.1(b) herein, Grantee expressly agrees that it will construct, operate and maintain its Cable System in compliance with, and subject to, the requirements of the City Code, including by way of example and not limitation, those requirements governing the placement of Grantee's Cable System; and with other applicable City Codes, and will obtain and maintain all permits and bonds required by the City Code in addition to those required in this Franchise.

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

(c) All wires, conduits, cables and other property and facilities of Grantee, shall be constructed and installed in an orderly and workmanlike manner. All wires, conduits and cables shall be installed, where possible, parallel with electric and telephone lines. Multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering considerations.

3.2 **Construction or Alteration**. Subject to Section 2.1(b) herein, Grantee shall in all cases comply with the City Code, City resolutions and City regulations regarding the acquisition of permits and/or such other items as may be reasonably required in order to construct, alter or maintain the Cable System. Grantee shall, upon request, provide information to the City regarding its progress in completing or altering the Cable System.

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

3.4 **Consistency with Designated Use.** Notwithstanding the above grant to use Streets, no Street shall be used by Grantee if the City, in its sole opinion, determines that such

use is inconsistent with the terms, conditions or provisions by which such Street was created or dedicated, or presently used under Applicable Laws.

3.5 **Undergrounding**. Grantee shall place underground all of its transmission lines which are located or are to be located above or within the Streets of the City in the following cases:

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

(b) Grantee is unable to get pole clearance;

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

(d) utilities are overhead but residents prefer underground (service provided at cost).

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

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

3.6 **Maintenance and Restoration**.

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

damage to private property in the process of restoring facilities, Grantee shall repair such damage.

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

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

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

3.8 **Relocation**.

(a) City Property. If, during the term of the Franchise, the City or any government entity elects or requires a third party to alter, repair, realign, abandon, improve, vacate, reroute or change the grade of any Street, public way or other public property; or to construct, maintain or repair any public improvement; or to replace, repair install, maintain, or otherwise alter any cable, wire conduit, pipe, line, pole, wire-holding structure, structure, or other facility, including a facility used for the provision of utility or other services or transportation of drainage, sewage or other liquids, for any public purpose, Grantee shall, upon request, except as otherwise hereinafter provided, at its sole expense remove or relocate as necessary its poles, wires, cables, underground conduits, vaults, pedestals, manholes and any other facilities which it has installed. Nothing herein shall mandate that City provide reimbursement to Grantee for the costs of such relocation and removal. However, if the City makes available funds for the cost of placing facilities underground, nothing herein shall preclude the Grantee from participating in such funding to the extent consistent with the City Code or Applicable Laws.

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

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

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

(e) Procedure for Removal of Cable. Grantee shall not remove any underground cable or conduit which requires trenching or other opening of the Streets along the extension of cable to be removed, except as hereinafter provided. Grantee may remove any underground cable from the Streets which has been installed in such a manner that it can be removed without trenching or other opening of the Streets along the extension of cable to be removed. Subject to Applicable Law, Grantee shall remove, at its sole cost and expense, any underground cable or conduit by trenching or opening of the Streets along the extension thereof or otherwise which is ordered to be removed by the City based upon a determination, in the sole discretion of the City, that removal is required in order to eliminate or prevent a hazardous condition. Underground cable and conduit in the Streets which is not removed shall be deemed abandoned and title thereto shall be vested in the City.

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

SECTION 4
REMOVAL OR ABANDONMENT OF SYSTEM

4.1 **Removal of Cable System**. In the event that: (l) the use of the Cable System is discontinued for any reason for a continuous period of twelve (12) months; or (2) the Cable System has been installed in a Street without complying with the requirements of this Franchise, Grantee, at its expense shall, at the demand of the City remove promptly from the Streets all of the Cable System, used only to provide Cable Service, other than any which the City may permit to be abandoned in place. In the event of any such removal Grantee shall promptly restore to a

condition as nearly as possible to its prior condition the Street or other public places in the City from which the System has been removed.

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

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

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

(a) Declare all right, title and interest to the System, used only to provide Cable Service, to be in the City or its designee with all rights of ownership including, but not limited to, the right to operate the System or transfer the System to another for operation by it; or

(b) Declare the System abandoned and cause the System, if used only to provide Cable Service, or such part thereof as the City shall designate, to be removed at no cost to the City. The cost of said removal shall be recoverable from the security fund, indemnity and penalty section provided for in this Franchise or from Grantee directly.

(c) Upon termination of service to any Subscriber, Grantee shall promptly remove all its facilities and equipment from within the dwelling of a Subscriber who owns such dwelling upon his or her written request, except as provided by Applicable Law. Such Subscribers shall be responsible for any costs incurred by Grantee in removing the facilities and equipment.

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

4.6 **System Maps and Layout**. To the extent not otherwise provided for in Section 2.6(b), Grantee, or an affiliate, shall maintain complete and accurate records, maps and diagrams of the location of all its facilities used to provide Cable Services and the Cable System maintained by QC in the Streets and make them available to the City upon request.

SECTION 5
SYSTEM DESIGN AND CAPACITY

5.1 **Availability of Signals and Equipment**.

(a) The Cable System shall have a bandwidth capable of providing the equivalent of a typical 750 MHz Cable System. Recognizing that the City has limited authority under federal law to designate the technical method by which Grantee provides Cable Service, as of the Effective Date of this Franchise, Grantee provides its Cable Service utilizing two (2) different methods. First, using a PON platform, the Grantee provides Cable Service to some Qualified Living Units by connecting fiber directly to the household ("FTTP"). Second, the Grantee provides Cable Service to some Qualified Living Units by deploying fiber further into the neighborhoods and using the existing copper infrastructure to increase broadband speeds ("FTTN"). Generally speaking, when Grantee deploys FTTN, households located within four thousand (4,000) cable feet of a remote terminal shall receive broadband speeds capable of providing Cable Service. In both the FTTP and FTTN footprint, a household receiving a minimum of 25 Mbps downstream will generally be capable of receiving Cable Service after Grantee performs certain network grooming and conditioning.

(b) The Grantee shall comply with all FCC regulations regarding carriage of digital and HDTV transmissions.

(c) Grantee agrees to maintain the Cable System in a manner consistent with, or in excess of the specifications in Section 5.1 (a) and (b) throughout the term of the Franchise with sufficient capability and technical quality to enable the implementation and performance of all the requirements of this Franchise, including the exhibits hereto, and in a manner which meets or exceeds FCC technical quality standards at 47 C.F.R. § 76 Subpart K, regardless of the particular format in which a signal is transmitted.

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

(a) As part of its support for PEG use of the System, the Grantee shall provide a free drop to the Subscriber network and free Basic Cable Service and Expanded Basic Cable Service to all of the sites listed on Exhibit A attached hereto, 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. However, City may determine to disconnect the other cable provider and require Grantee to meet the free service obligation, as determined in City's sole discretion.

(b) The Grantee 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 and Expanded Basic Cable Service at each outlet so long as such extension does not result in any violations of applicable leakage standards which the Grantee is obligated to meet. A location that wishes to install multiple outlets may do so itself, or may contract with the Grantee to do so. Grantee shall provide up to three (3) additional Set Top Boxes to each new 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 Set Top Boxes to the new locations with a free drop, and the moved Set Top Box will not count against the three (3) additional Set Top Boxes. Grantee will replace and maintain Set Top Boxes it provides or that it had provided as necessary so that locations may continue to view the free services Grantee 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 Grantee to meet the free service obligation, as determined in City's sole discretion.

(c) Outlets of Basic and Expanded Basic Cable Service provided in accordance with this section may be used to distribute Cable Services throughout such buildings; provided such distribution can be accomplished without causing Cable System disruption and general technical standards are maintained. Such outlets may only be used for lawful purposes. Grantee agrees that if any broadband service is required in order to receive the free service obligation set forth in this section, Grantee will provide such broadband service free of charge for the sole purpose of facilitating the provision of free Cable Service required by this section. Grantee 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 connections or services to public facilities.

5.3 **System Specifications**.

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

(b) Emergency Alert Capability. At all times during the term of this Franchise, Grantee shall provide and maintain an Emergency Alert System (EAS) consistent with applicable federal law and regulations including 47 C.F.R., Part 11, and any Minnesota State Emergency Alert System requirements. The City may identify authorized emergency officials for activating the EAS consistent with the Minnesota State Emergency Statewide Plan ("EAS Plan"). The City may also develop a local plan containing methods of EAS message distribution, subject to Applicable Laws and the EAS Plan. Nothing in this section is intended to expand Grantee's obligations beyond that which is required by the EAS Plan and Applicable Law.

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

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

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

(a) Initial proof of performance for any construction;

(b) Semi-annual compliance tests;

(c) Tests in response to Subscriber complaints;

(d) Tests requested by the City to demonstrate franchise compliance; and

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

5.5 **Special Testing**.

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

(b) Before ordering such tests, Grantee shall be afforded thirty (30) Days following receipt of written notice to investigate and, if necessary, correct problems or complaints upon which tests were ordered. City shall meet with Grantee prior to

requiring special tests to discuss the need for such and, if possible, visually inspect those locations which are the focus of concern. If, after such meetings and inspections, City wishes to commence special tests and the thirty (30) Days have elapsed without correction of the matter in controversy or unresolved complaints, the tests shall be conducted at Grantee's expense by Grantee's qualified engineer. The City shall have a right to participate in such testing by having an engineer of City's choosing, and at City's expense, observe and monitor said testing.

SECTION 6
PROGRAMMING AND SERVICES

6.1 **Categories of Programming Service**. Grantee shall provide video programming services in at least the following broad categories:

Local Broadcast (subject to federal carriage requirements)
Public Broadcast
News and Information
Sports
General Entertainment
Arts/Performance/Humanities
Science/Technology
Children/Family/Seniors
Foreign Language/Ethnic Programming
Public, Educational and Governmental Access Programming (to the extent required by the Franchise)
Movies
Leased Access

6.2 **Changes in Programming Services**. Grantee shall not delete or so limit as to effectively delete any broad category of programming within its control without the City's consent. Further, Grantee shall provide at least thirty (30) Days' prior written notice to Subscribers and to the City of Grantee's request to effectively delete any broad category of programming or any Channel within its control, including all proposed changes in bandwidth or Channel allocation and any assignments including any new equipment requirements that may occur as a result of these changes.

6.3 **Parental Control Device**. Upon request by any Subscriber, Grantee shall make available for sale or lease a parental control or lockout device that will enable the Subscriber to block all access to any and all Channels without affecting those not blocked. Grantee shall inform Subscribers of the availability of the lockout device at the time of original subscription and annually thereafter.

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

6.5 **Annexation**. Unless otherwise provided by Applicable Law, including the City Code, upon the annexation of any additional land area by City, the annexed area shall thereafter

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

6.6 **Line Extension**. Grantee shall not have a line extension obligation until the first date by which Grantee is providing Cable Service to more than fifty percent (50%) of all Subscribers receiving facilities based Cable Service from both the Grantee and any other provider(s) of Cable Service within the City. At that time, the City, in its reasonable discretion and after meeting with Grantee, 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.

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

SECTION 7
PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS

7.1 **Number of PEG Access Channels**. Within one hundred eighty (180) days of the Effective Date, Grantee will make available three (3) PEG Access Channels.

7.2 **Digital and High Definition PEG Carriage Requirements.** 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 Grantee's obligation with respect to carriage of PEG in HD and SD formats shall be as follows:

(a) Grantee agrees to carry all PEG Access Channels in HD provided the entity originating the signal provides the Grantee an HD signal. Further, Grantee 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 SD format.

(b) Grantee 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 Grantee in a HD format.

(c) All PEG Access Channels must be receivable by Subscribers without special expense in addition to the expense paid to receive commercial services the Subscriber receives. City acknowledges that HD programming may require the viewer to have special viewer equipment (such as an HDTV and an HD-capable digital device/receiver), but any Subscriber who can view an HD signal delivered via the Cable System at a receiver shall also be able to view the HD Access Channels at that receiver, without additional charges or equipment. By agreeing to make PEG available in HD format, Grantee is not agreeing to provide free HD equipment to Subscribers including complimentary municipal and educational accounts, or to modify its equipment or pricing policies in any manner. City acknowledges that not every Subscriber 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 Grantee or other equipment provider) or on every television in the home.

(d) The Grantee, upon request of the City, will provide technical assistance or diagnostic services to determine whether or not the problem with the PEG signals is the result of matters for which the Grantee is responsible, and if so the Grantee will take prompt corrective actions.

(e) The Grantee will provide any PEG Access Channels on the Basic Cable Service tier throughout the life of the Franchise, or if there is no Basic Cable Service tier, shall provide the PEG Access Channels to any Person who subscribes to any level of cable video programming service, and otherwise in accordance with Applicable Laws. To the extent technically feasible, Grantee shall, upon request from the City, provide City with quarterly viewership numbers for each of the PEG Access Channels carried on Grantee's Cable System.

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

(g) 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, Grantee shall ensure that the Grantee will provide PEG listings on that menu system, if it is provided with the programming information by the City.

7.3 **Control of PEG Channels**. The control and administration of the Access Channels shall rest with the City and the City may delegate, from time to time over the term of this Franchise, such control and administration to various entities as determined in City's sole discretion.

7.4 **Transmission of Access Channels**. Access Channels may be used for transmission of non-video signals in compliance with Applicable Laws. This may include downstream transmission of data using a protocol such as TCP/IP or current industry standards. Should Grantee develop the capability to provide bi-directional data transmission, spectrum capacity shall be sufficient to allow Subscribers to transmit data to PEG facilities.

7.5 **Access Channel Locations**.

(a) Grantee shall provide the City's government access channel in both HD and SD. The government access channel will be located on Channel 235 and shall at all times be located in the Channel neighborhood offering news/public affairs programming on Grantee's Cable System channel lineup. The government access channel shall have video and audio signal strength, signal quality, and functionality equivalent to the highest

quality broadcast and commercial cable/satellite Channels carried by the Grantee on its Cable System.

(i) Grantee shall carry the remaining public and educational Channels (PE Channels) on Channel 26 in its Channel lineup as a means to provide ease of access by Subscribers to the group of PE Channels placed consecutively on Channel numbers significantly higher in the Channel lineup. This use of one (1) Channel to access the group of PE Channels required under this Franchise shall be referred to as a "Mosaic Channel." The Mosaic Channel shall display the group of PE Channels on a single Channel screen and serve as a navigation tool for Subscribers. The Mosaic Channel shall allow Subscribers to navigate directly from Channel 26 to any of the PE Channels requested in a single operation without any intermediate steps to a chosen PE Channel in the group.

(ii) Grantee shall use Channel 26 as a Mosaic Channel to access the PE Channels required under this Franchise. The group of consecutive PE channels residing at higher Channel numbers will retain Channel names and identity for marketing purposes, unless approved by the City. Grantee shall not include any other programming or Channels on the Commission's PE Mosaic Channel unless the City provides advance written consent.

(iii) When using the Mosaic Channel, Subscribers shall be directed to the requested PE Channel in an HD format if appropriate to the Subscriber's level of service; otherwise, the Subscriber shall be directed to the SD PE Channel. The Mosaic Channel mechanism shall allow Subscribers to navigate directly from Channel 26 to the requested Commission Access Channels which shall be located on Channel numbers 8110 (educational access) and 8111 (public access).

(iv) Grantee shall consult with the City (or City's designee) to determine the PE Channel information displayed on the Mosaic Channel. However, the information shall have video and audio signal strength, signal quality, and functionality equivalent to the highest quality broadcast and commercial cable/satellite channels carried by the Grantee on its Cable System in a Mosaic format.

(v) The Mosaic Channel assigned for use by the City shall be used to navigate to the group of City PE Channels and will be placed near other PEG Mosaic Channels

(vi) If through technology changes or innovation in the future, the Grantee discontinues the use of Mosaic presentations, then Grantee shall provide the PE Channels to Subscribers at equivalent visual and audio quality and equivalent functionality as Grantee delivers the highest quality broadcast stations and highest quality commercial cable/satellite channels on its Cable System with no degradation.

(b) The Grantee shall not charge for use of the PEG Access Channels, equipment, facilities or services.

(c) In no event shall any Access Channel reallocations be made prior to ninety (90) Days written notice to the City by Grantee, except for circumstances beyond Grantee's reasonable control. The Access Channels will be located within reasonable proximity to other commercial video or broadcast Channels, excluding pay-per-view programming offered by Grantee in the City.

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

(e) In conjunction with any occurrence of any Access Channel(s) relocation, as may be permitted by this Franchise, Grantee shall provide a minimum of Nine Thousand Dollars ($9,000) of in-kind air time per event on advertiser supported Channels (e.g. USA, TNT, TBS, Discovery Channel, or other comparable Channels) for the purpose of airing City's, or its designees', pre-produced thirty (30) second announcement explaining the change in location, or if Grantee does not have air time capabilities a mutually agreed equivalent shall be provided.

7.6 **Navigation to Access Channels**. Grantee agrees that if it utilizes a visual interface under its control on its Cable System for all Channels, the Access Channels shall be treated in a non-discriminatory fashion consistent with Applicable Laws so that Subscribers will have ready access to Access Channels. This shall not be construed to require Grantee to pay any third party fees that may result from this obligation.

7.7 **Ownership of Access Channels**. Grantee does not relinquish its ownership of or ultimate right of control over a Channel by designating it for PEG use. A PEG access user – whether an individual, educational or governmental user – acquires no property or other interest by virtue of the use of a Channel position so designated. Grantee shall not exercise editorial control over any public, educational, or governmental use of a Channel position, except Grantee may refuse to transmit any public access program or portion of a public access program that contains obscenity, indecency, or nudity in violation of Applicable Law.

7.8 **Noncommercial Use of PEG**. Permitted noncommercial uses of the Access Channels shall include by way of example and not limitation: (1) the identification of financial supporters similar to what is provided on public broadcasting stations; or (2) the solicitation of financial support for the provision of PEG programming by the City or third party users for charitable, educational or governmental purposes; or (3) programming offered by accredited, non-profit, educational institutions which may, for example, offer telecourses over a Access Channel.

7.9 **Dedicated Fiber Return Lines.**

(a) Grantee shall provide and maintain, free of charge with no transport costs or other fees or costs imposed, a direct fiber connection and necessary equipment to

transmit PEG programming from the City Hall control room racks to the Grantee headend ("PEG Origination Connection").

(b) In addition to the PEG Origination Connection, the Grantee shall, free of charge, construct a direct connection and necessary equipment to the programming origination site located at Edina City Hall where PEG programming is originated by the Commission.

(c) Grantee shall at all times provide and maintain, free of charge, a drop to the Cable System, required Set-Top Box and free Basic Cable Service and Expanded Basic Service to the City Hall and the location from which PEG programming is originated (currently the playback facility at the Edina City Hall), to allow these facilities to view (live) the downstream PEG programming Channels on Grantee's Cable System so they can monitor the PEG signals and make certain that PEG programming is being properly received (picture and sound) by Subscribers.

7.10 **Interconnection.** To the extent technically feasible and permitted under Applicable Laws, Grantee will allow necessary interconnection with any newly constructed City and school fiber for noncommercial programming to be promoted and administered by the City as allowed under Applicable Laws and at no additional cost to the City or schools. This may be accomplished through a patch panel or other similar facility and each party will be responsible for the fiber on their respective sides of the demarcation point. Grantee reserves its right to review on a case-by-case basis the technical feasibility of the proposed interconnection. Based on this review Grantee may condition the interconnection on the reasonable reimbursement of Grantee's incremental costs, with no markup for profit, to recoup Grantee's construction costs only. In no event will Grantee impose any type of recurring fee for said interconnection.

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

7.12 **Future Fiber Return Lines for PEG**. At such time that the City determines:

(a) that the City desires the capacity to allow Subscribers in the City to receive PEG programming (video or character generated) which may originate from schools, City facilities, other government facilities or other designated facilities (other than those indicated in paragraph 10); or

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

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

the City will give Grantee written notice detailing the point of origination and the capability sought by the City. Grantee agrees to submit a cost estimate to implement the City's plan within a reasonable period of time but not later than September 1st in the year preceding the request for any costs exceeding Twenty-five Thousand and No/100 Dollars ($25,000). The cost estimate will be on a time and materials basis with no additional markup. After an agreement to reimburse Grantee for Grantee's out of pocket time and material costs, Grantee will implement any necessary Cable System changes within a reasonable period of time. Nothing herein prevents the City, or a private contractor retained by the City, from constructing said return fiber.

7.13 **Access Channel Carriage.**

(a) Any and all costs associated with any modification of the Access Channels or signals after the Access Channels/signals leave the City's designated playback facilities, or any designated playback center authorized by the City shall be borne entirely by Grantee. Grantee shall not cause any programming to override PEG programming on any Access Channel, except by oral or written permission from the City, with the exception of emergency alert signals.

(b) The City may request and Grantee shall provide an additional Access Channel when the cumulative time on all the existing Access Channels combined meets the following standard: whenever one of the Access Channels in use during eighty percent (80%) of the weekdays, Monday through Friday, for eighty percent (80%) of the time during a consecutive three (3) hour period for six (6) weeks running, and there is a demand for use of an additional Channel for the same purpose, the Grantee has six (6) months in which to provide a new, Access Channel for the same purpose; provided that, the provision of the additional Channel or Channels does not require the Cable System to install Converters.

(c) The VHF spectrum shall be used for one (1) of the public, educational, or governmental specially designated Access Channels.

(d) Subject to the terms of this Franchise, the City or its designee shall be responsible for developing, implementing, interpreting and enforcing rules for PEG Access Channel use.

(e) The Grantee shall monitor the Access Channels for technical quality to ensure that they meet FCC technical standards including those applicable to the carriage of Access Channels, provided however, that the Grantee is not responsible for the production quality of PEG programming productions. The City, or its designee, shall be responsible for the production and quality of all PEG access programming. Grantee shall carry all components of the standard definition of Access Channel including, but not limited to, closed captioning, stereo audio and other elements associated with the programming.

7.14 **Access Channel Support.**

(a) Upon the Effective Date of this Franchise, Grantee shall collect and remit to the City Sixty cents (60¢) per Subscriber per month in support of PEG capital ("PEG Fee").

(b) On August 1, 2017, the City, at its discretion, and upon ninety (90) Days advance written notice to Grantee, may require Grantee to increase the PEG Fee to Sixty-five cents (65¢) per Subscriber per month for the remaining term of the Franchise. The PEG Fee shall be used by City in its sole discretion to fund PEG access capital expenditures. In no event shall the PEG Fee be assessed in an amount different from that imposed upon the incumbent cable provider. In the event the incumbent cable provider agrees to a higher or lower PEG Fee, Grantee will increase or decrease its PEG Fee upon ninety (90) Days written notice from the City.

(c) The PEG Fee is not intended to represent part of the Franchise Fee and is intended to fall within one (1) or more of the exceptions in 47 U.S.C. § 542. The PEG Fee may be categorized, itemized, and passed through to Subscribers as permissible, in accordance with 47 U.S.C. §542 or other Applicable Laws. Grantee shall pay the PEG Fee to the City quarterly at the same time as the payment of Franchise Fees under Section 16.1 of the Franchise. Grantee agrees that it will not offset or reduce its payment of past, present or future Franchise Fees required as a result of its obligation to remit the PEG Fee.

(d) Any PEG Fee amounts owing pursuant to this Franchise which remain unpaid more than twenty-five (25) Days after the date the payment is due shall be delinquent and shall thereafter accrue interest at twelve percent (12%) per annum or the prime lending rate published by the Wall Street Journal on the Day the payment was due plus two percent (2%), whichever is greater.

7.15 **PEG Technical Quality.**

(a) Grantee shall not be required to carry a PEG Access Channel in a higher quality format than that of the Channel Signal delivered to Grantee, but Grantee shall not implement a change in the method of delivery of Access Channels that results in a material degradation of signal quality or impairment of viewer reception of Access Channels, provided that this requirement shall not prohibit Grantee from implementing new technologies also utilized for commercial Channels carried on its Cable System. Grantee shall meet FCC signal quality standards when offering Access Channels on its Cable System and shall continue to comply with closed captioning pass-through requirements. There shall be no significant deterioration in an Access Channels signal from the point of origination upstream to the point of reception downstream on the Cable System.

(b) Within twenty-four (24) hours of a written request from City to the Grantee identifying a technical problem with a Access Channel and requesting assistance, Grantee will provide technical assistance or diagnostic services to determine whether or

not a problem with a PEG signal is the result of matters for which Grantee is responsible and if so, Grantee will take prompt corrective action. If the problem persists and there is a dispute about the cause, then the parties shall meet with engineering representation from Grantee and the City in order to determine the course of action to remedy the problem.

7.16 **Access Channel Promotion**. Grantee shall allow the City to print and mail a post card for promoting a designated entity's service or generally promoting community programming to households in the City subscribing to Grantee's Cable Service at a cost to the City not to exceed Grantee's out of pocket cost, no less frequently than twice per year, or at such time as a Access Channel is moved or relocated, upon the written request of the City. The post card shall be designed by the City and shall conform to the Grantee's standards and policies for size and weight. Any post card denigrating the Grantee, its service or its programming is not permitted. The City agrees to pay Grantee in advance for the actual cost of such post card.

7.17 **Change in Technology**. In the event Grantee makes any change in the Cable System and related equipment and facilities or in its signal delivery technology, which requires the City to obtain new equipment in order to be compatible with such change for purposes of transport and delivery of the Access Channels, Grantee shall, at its own expense and free of charge to City or its designated entities, purchase such equipment as may be necessary to facilitate the cablecasting of the Access Channels in accordance with the requirements of the Franchise.

7.18 **Relocation of Grantee's Headend**. In the event Grantee relocates its headend, Grantee will be responsible for replacing or restoring the existing dedicated fiber connections at Grantee's cost so that all the functions and capacity remain available, operate reliably and satisfy all applicable technical standards and related obligations of the Franchise free of charge to the City or its designated entities.

7.19 **Regional Channel Six**. Grantee shall make available Regional Channel Six as long as it is required to do so by the State of Minnesota.

7.20 **Government Access Channel Functionality**. Grantee agrees to provide the capability such that the City, from its City Hall, can switch its government Access Channel in the following ways:

(a) Insert live Council meetings from City Hall;

(b) Replay government access programming from City Hall; and

(c) Transmit character generated programming.

(d) Schedule for Grantee to replay City-provided tapes in pre-arranged time slot on the government Access Channel; and

(e) Switch to other available programming where the City has legal authority.

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

SECTION 8
REGULATORY PROVISIONS.

8.1 **Intent.** The City shall have the right to administer and regulate activities under the Franchise up to the full extent permitted by Applicable Law.

8.2 **Delegation of Authority to Regulate.** The City reserves the right to delegate its regulatory authority wholly or in part to agents of the City, including, but not limited to, an agency which may be formed to regulate several franchises in the region in a manner consistent with Applicable Laws. This may include but shall not be limited to the Commission or other entity as City may determine in its sole discretion. Any existing delegation in place at the time of the grant of this Franchise shall remain intact unless expressly modified by City.

8.3 **Areas of Administrative Authority.** In addition to any other regulatory authority granted to the City by law or franchise, the City shall have administrative authority in the following areas:

(a) Administering and enforcing the provisions of this Franchise, including the adoption of administrative rules and regulations to carry out this responsibility.

(b) Coordinating the operation of Access Channels.

(c) Formulating and recommending long-range cable communications policy for the Franchise Area.

(d) Disbursing and utilizing Franchise revenues paid to the City.

(e) Administering the regulation of rates, to the extent permitted by Applicable Law.

(f) All other regulatory authority permitted under Applicable Law.

The City or its designee shall have continuing regulatory jurisdiction and supervision over the System and the Grantee's operations under the Franchise to the extent allowed by Applicable Law.

8.4 **Regulation of Rates and Charges.**

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

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

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

SECTION 9
BOND.

9.1 **Performance Bond**. Upon the Effective Date of this Franchise and at all times thereafter Grantee shall maintain with City a bond in the sum of One Hundred Thousand Dollars ($100,000.00) in such form and with such sureties as shall be acceptable to City, conditioned upon the faithful performance by Grantee of this Franchise and the acceptance hereof given by City and upon the further condition that in the event Grantee shall fail to comply with any law, ordinance or regulation, there shall be recoverable jointly and severally from the principal and surety of the bond, any damages or losses suffered by City as a result, including the full amount of any compensation, indemnification or cost of removal of any property of Grantee, including a reasonable allowance for attorneys' fees and costs (with interest at two percent (2%) in excess of the then prime rate), up to the full amount of the bond, and which bond shall further guarantee payment by Grantee of all claims and liens against City or any, public property, and taxes due to City, which arise by reason of the construction, operation, maintenance or use of the Cable System. The City shall provide Grantee reasonable advanced notice of not less than ten (10) Days prior to any draw by the City on the performance bond required under this Section 9.

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

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

SECTION 10
SECURITY FUND

10.1 **Security Fund**. If there is an uncured breach by Grantee of a material provision of this Franchise or a pattern of repeated violations of any provision(s) of this Franchise, then

Grantee shall, upon written request, establish and provide to the City, as security for the faithful performance by Grantee of all of the provisions of this Franchise, a letter of credit from a financial institution satisfactory to the City in the amount of Twenty Thousand and No/100 Dollars ($20,000.00). In no event shall Grantee fail to post a Twenty Thousand and No/100 Dollar ($20,000.00) letter of credit within thirty (30) days receipt of a notice of franchise violation pursuant to this Section 10.1. Failure to post said letter of credit shall constitute a separate material violation of this Franchise, unless the breach is cured within such thirty (30) Day period or longer period allowed under the Franchise. The letter of credit shall serve as a common security fund for the faithful performance by Grantee of all the provisions of this Franchise and compliance with all orders, permits and directions of the City and the payment by Grantee of any claim, liens, costs, expenses and taxes due the City which arise by reason of the construction, operation or maintenance of the Cable System. Interest on this deposit shall be paid to Grantee by the bank on an annual basis. The security may be terminated by the Grantee upon the resolution of the alleged noncompliance. The obligation to establish the security fund required by this paragraph is unconditional. The fund must be established in those circumstances where Grantee disputes the allegation that it is not in compliance, and maintained for the duration of the dispute. If Grantee fails to establish the security fund as required, the City may take whatever action is appropriate to require the establishment of that fund and may recover its costs, reasonable attorneys' fees, and an additional penalty of Two Thousand Dollars ($2,000) in that action.

10.2 **Withdrawal of Funds**. Provision shall be made to permit the City to withdraw funds from the security fund. Grantee shall not use the security fund for other purposes and shall not assign, pledge or otherwise use this security fund as security for any purpose.

10.3 **Restoration of Funds**. Within ten (10) Days after notice to it that any amount has been withdrawn by the City from the security fund pursuant to 10.4 of this section, Grantee shall deposit a sum of money sufficient to restore such security fund to the required amount.

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

(a) For failure to provide data, documents, reports or information or to cooperate with City during an application process or System review, the liquidated damage shall be One Hundred Dollars ($100.00) per Day for each Day, or part thereof, such failure occurs or continues.

(b) For failure to comply with any of the provisions of this Franchise for which a penalty is not otherwise specifically provided pursuant to this Paragraph 10.4, the liquidated damage shall be One Hundred Fifty Dollars ($150.00) per Day for each Day, or part thereof, such failure occurs or continues.

(c) For failure to test, analyze and report on the performance of the System following a request by City, the liquidated damage shall be Two Hundred Fifty Dollars ($250.00) per Day for each Day, or part thereof, such failure occurs or continues.

(d) Forty-five Days following notice from City of a failure of Grantee to comply with construction, operation or maintenance standards, the liquidated damage shall be Two Hundred Dollars ($200.00) per Day for each Day, or part thereof, such failure occurs or continues.

(e) For failure to provide the services Grantee has proposed, including but not limited to the implementation and the utilization of the Access Channels the liquidated damage shall be One Hundred Fifty ($150.00) per Day for each Day, or part thereof, such failure occurs or continues.

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

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

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

10.8 **Procedure for Draw on Security Fund**. Whenever the City finds that Grantee has allegedly violated one (1) or more terms, conditions or provisions of this Franchise, a written notice shall be given to Grantee. The written notice shall describe in reasonable detail the alleged violation so as to afford Grantee an opportunity to remedy the violation. Grantee shall have thirty (30) Days subsequent to receipt of the notice in which to correct the violation before the City may require Grantee to make payment of damages, and further to enforce payment of damages through the security fund. Grantee may, within ten (10) Days of receipt of notice, notify the City that there is a dispute as to whether a violation or failure has, in fact, occurred. Such notice by Grantee shall specify with particularity the matters disputed by Grantee and shall stay the running of the above-described time.

(a) City shall hear Grantee's dispute at the next regularly scheduled or specially scheduled Council meeting. Grantee shall have the right to speak and introduce evidence. The City shall determine if Grantee has committed a violation and shall make written findings of fact relative to its determination. If a violation is found, Grantee may petition for reconsideration.

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

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

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

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

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

SECTION 11
DEFAULT

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

(a) Violated any material provision of this Franchise or the acceptance hereto or any rule, order, regulation or determination of the City, state or federal government, not in conflict with this Franchise;

(b) Attempted to evade any provision of this Franchise or the acceptance hereof;

(c) Practiced any fraud or deceit upon City or Subscribers; or

(d) Made a material misrepresentation of fact in the application for or negotiation of this Franchise.

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

(a) City shall provide Grantee with a written notice of the reason or cause for proposed termination and shall allow Grantee a minimum of thirty (30) Days subsequent to receipt of the notice in which to correct the default.

(b) Grantee shall be provided with an opportunity to be heard at a public hearing prior to any decision to terminate this Franchise.

(c) If, after notice is given and an opportunity to cure, at Grantee's option, a public hearing is held, and the City determines there was a violation, breach, failure, refusal or neglect, the City may declare by resolution the Franchise revoked and of no further force and effect unless there is compliance within such period as the City may fix, such period may not be less than thirty (30) Days provided no opportunity for compliance need be granted for fraud or misrepresentation.

11.3 **Mediation**. If the Grantee and City are unable to resolve a dispute through informal negotiations during the period of thirty (30) Days following the submission of the claim giving rise to the dispute by one (1) party to the other, then unless that claim has been waived as provided in the Franchise, such claim may be subject to mediation if jointly agreed upon by both parties. Unless the Grantee and City mutually agree otherwise, such mediation shall be in accordance with the rules of the American Arbitration Association currently in effect at the time of the mediation. A party seeking mediation shall file a request for mediation with the other party to the Franchise and with the American Arbitration Association. The request may be made simultaneously with the filing of a complaint, but, in such event, mediation shall proceed in advance of legal proceedings only if the other party agrees to participate in mediation. Mutually agreed upon Mediation shall stay other enforcement remedies of the parties for a period of ninety (90) days from the date of filing, unless stayed for a longer period by agreement of the Grantee and City. The Grantee and City shall each pay one-half of the mediator's fee and any filing fees. The mediation shall be held in the City unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as a settlement agreement in any court having jurisdiction thereof. Nothing herein shall serve to modify or on any way delay the franchise enforcement process set forth in Section 10 of this Franchise.

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

11.5 **Compliance with the Laws.**

(a) If any federal or state law or regulation shall require or permit City or Grantee to perform any service or act or shall prohibit City or Grantee from performing any service or act which may be in conflict with the terms of this Franchise, then as soon as possible following knowledge thereof, either party shall notify the other of the point in conflict believed to exist between such law or regulation. Grantee and City shall conform to state laws and rules regarding cable communications not later than one (1) year after they become effective, unless otherwise stated, and shall conform to federal laws and regulations regarding cable as they become effective.

(b) If any term, condition or provision of this Franchise or the application thereof to any Person or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition or provision to Persons or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Franchise and all the terms, provisions and conditions hereof shall, in all other respects, continue to be effective and complied with provided the loss of the invalid or unenforceable clause does not substantially alter the agreement between the parties. In the event such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision which had been held invalid or modified is no longer in conflict with the law, rules and regulations then in effect, said provision shall thereupon return to full force and effect and shall thereafter be binding on Grantee and City.

SECTION 12
FORECLOSURE AND RECEIVERSHIP

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

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

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

(b) Such receiver or trustee, within said one hundred twenty (120) Days, shall have executed an agreement, duly approved by the Court having jurisdiction in the

premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Franchise.

SECTION 13
REPORTING REQUIREMENTS

13.1 **Quarterly Reports**. Within forty-five (45) calendar days after the end of each calendar quarter, Grantee shall submit to the City along with its Franchise Fee payment a report showing the basis for computation of such fees prepared by an officer, or designee of Grantee showing the basis for the computation of the Franchise Fees paid during that period in a form and substance substantially equivalent to Exhibit B attached hereto. This report shall separately indicate revenues received by Grantee within the City including, but not limited to such items as listed in the definition of "Gross Revenues" at Section 1 of this Franchise.

13.2 **Monitoring and Compliance Reports**. Upon request, but no more than once a year, Grantee shall provide a written report of any and all applicable FCC technical performance tests for the residential network required in FCC Rules and Regulations as now or hereinafter constituted. In addition, Grantee shall provide City with copies of reports of the semi-annual test and compliance procedures applicable to Grantee and established by this Franchise no later than thirty (30) Days after the completion of each series of tests.

13.3 **Reports**. Upon request of the City and in no event later than thirty (30) Days from the date of receipt of such request, Grantee shall, free of charge, prepare and furnish to the City, at the times and in the form prescribed that Grantee is technically capable of producing, such additional reports with respect to its operation, affairs, transactions, or property, as may be reasonably necessary to ensure compliance with the terms of this Franchise. Grantee and City may in good faith agree upon taking into consideration Grantee's need for the continuing confidentiality as prescribed herein. Neither City nor Grantee shall unreasonably demand or withhold information requested pursuant with the terms of this Franchise.

13.4 **Communications with Regulatory Agencies**.

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

(b) In addition, Grantee and its Affiliates shall within ten (10) Days of any communication to or from any judicial or regulatory agency regarding any alleged or

actual violation of this Franchise, City regulation or other requirement relating to the System, use its best efforts to provide the City a copy of the communication, whether specifically requested by the City to do so or not.

SECTION 14
CUSTOMER SERVICE POLICIES

14.1 **Response to Customers and Cooperation with City**. Grantee shall promptly respond to all requests for service, repair, installation and information from Subscribers. Grantee acknowledges the City's interest in the prompt resolution of all cable complaints and shall work in close cooperation with the City to resolve complaints.

14.2 **Definition of "Complaint."** For the purposes of Section 14, with the exception of Subsection 14.5, a "complaint" shall mean any communication to Grantee or to the City by a Subscriber or a Person who has requested Cable Service; a Person expressing dissatisfaction with any service, performance, or lack thereof, by Grantee under the obligations of this Franchise.

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

(a) Services to be provided and rates for such services.

(b) Billing procedures.

(c) Service termination procedure.

(d) Change in service notifications.

(e) Liability specifications.

(f) Set Top Boxes/Subscriber terminal equipment policy.

(g) How complaints are handled including Grantee's procedure for investigation and resolution of Subscriber complaints.

(h) The name, address, and phone number of the Person identified by the City as responsible for handling cable questions and complaints for the City. This information shall be prominently displayed and Grantee shall submit the information to the City for review and approval as to its content and placement on Subscriber billing statements.

(i) A copy of the written information shall be provided to each Subscriber at the time of initial Connection and any subsequent reconnection.

14.4 **Reporting Complaints.**

(a) The requirements of this Section 14.4 shall be subject to federal law regarding Subscriber privacy. Grantee shall maintain all Subscriber data available for City inspection. Subscriber data shall include the date, name, address, telephone number of Subscriber complaints as well as the subject of the complaint, date and type of action taken to resolve the complaint, any additional action taken by Grantee or the Subscriber. The data shall be maintained in a way that allows for simplified access of the data by the City.

(b) Subject to federal law and upon reasonable request by the City, Grantee shall, within a reasonable amount of time, provide City with such Subscriber data for its review.

14.5 **Customer Service Standards**. The City hereby adopts the customer service standards set forth in Part 76, §76.309 of the FCC's rules and regulations, as amended. Grantee shall, upon request, which request shall include the reason for the request (such as complaints received or other reasonable evidence of concern), provide City with information which shall describe in detail Grantee's compliance with each and every term and provision of this Section 14.5. Grantee shall comply in all respects with the customer service requirements established by the FCC and those set forth herein. To the extent that this Franchise imposes requirements greater than those established by the FCC, Grantee reserves whatever rights it may have to recover the costs associated with compliance in any manner consistent with Applicable Law.

14.6 **Local Office**. During the term of the Franchise the Grantee shall comply with one of the following requirements:

(a) Grantee shall maintain a convenient local customer service and bill payment location for matters such as receiving Subscriber payments, handling billing questions, equipment replacement and customer service information. Grantee shall comply with the standards and requirements for customer service set forth below during the term of this Franchise.

(b) Grantee 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, Grantee shall deliver replacement equipment directly to the Subscriber at no cost to the Subscriber. The Grantee shall maintain a business office or offices for the purpose of receiving and resolving all complaints regarding the quality of service, equipment malfunctions, billings disputes and similar matters. The office must be reachable by a local, toll-free telephone call, and Grantee shall provide the City with the name, address and telephone number of an office that will act as the Grantee's agent to receive complaints, regarding quality of service, equipment malfunctions, billings, and similar matters. At a minimum Grantee 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) Grantee 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 Fed Ex or UPS) if a service technician is not required to visit the Subscriber's Qualified Living Unit.

(iv) In the event Grantee 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 Grantee shall then be required to also comply with the requirements of Section 14.6 (a) above.

14.7 **Cable System office hours and telephone availability**.

(a) Grantee will maintain a local, toll-free or collect call telephone access line which will be available to its Subscribers twenty-four (24) hours a Day, seven (7) Days a week.

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

(ii) After Normal Business Hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after Normal Business Hours must be responded to by a trained Grantee representative on the next business Day.

(b) Under Normal Operating Conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time under Normal Operating Conditions, measured on a quarterly basis.

(c) Grantee shall not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

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

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

14.8 **Installations, Outages and Service Calls**. Under Normal Operating Conditions, each of the following standards will be met no less than ninety-five percent (95%) of the time measured on a quarterly basis:

(a) Standard Installations will be performed within seven (7) business days after an order has been placed. "Standard" Installations are those to a Qualified Living Unit.

(b) Excluding conditions beyond the control of Grantee, Grantee will begin working on "Service Interruptions" promptly and in no event later than twenty-four (24) hours after the interruption becomes known. Grantee must begin actions to correct other Service problems the next business Day after notification of the Service problem.

(c) The "appointment window" alternatives for Installations, Service calls, and other Installation activities will be either a specific time or, at maximum, a four (4) hour time block during Normal Business Hours. (Grantee may schedule Service calls and other Installation activities outside of Normal Business Hours for the express convenience of the customer.)

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

(e) If Grantee's representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

14.9 **Communications between Grantee and Subscribers.**

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

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

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

(b) Credits. Credits for Cable Service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

14.10 **Billing.**

(a) Consistent with 47 C.F.R. § 76.1619, bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, Basic Cable Service and premium Cable Service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

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

14.11 **Subscriber Information**. Grantee will provide written information on each of the following areas at the time of Installation of Service, at least annually to all Subscribers, and at any time upon request:

(a) Products and Services offered;

(b) Prices and options for programming services and conditions of subscription to programming and other services;

(c) Installation and Service maintenance policies;

(d) Instructions on how to use the Cable Service;

(e) Channel positions of programming carried on the System; and

(f) Billing and complaint procedures, including the address and telephone number of the City's cable office.

Subscribers shall be advised of the procedures for resolution of complaints about the quality of the television signal delivered by Grantee, including the address of the responsible officer of the City. Subscribers will be notified of any changes in rates, programming services or Channel positions as soon as possible in writing. Notice must be given to Subscribers a minimum of thirty (30) Days in advance of such changes if the change is within the control of Grantee. In addition, Grantee shall notify Subscribers thirty (30) Days in advance of any significant changes in the information required by this Section 14.11.

14.12 **Notice or Rate Programming Change**. In addition to the requirement of this Section 14.12 regarding advance notification to Subscribers of any changes in rates, programming services or Channel positions, Grantee shall give thirty (30) Days written notice to both Subscribers and the City before implementing any rate or Service change. If required by Applicable Law, such notice shall state the precise amount of any rate change and briefly explain in readily understandable fashion the cause of the rate change (e.g., inflation, change in external costs or the addition/deletion of Channels). When the change involves the addition or deletion of Channels, each Channel added or deleted must be separately identified. For purposes of the carriage of digital broadcast signals, Grantee need only identify for Subscribers, the television signal added and not whether that signal may be multiplexed during certain dayparts.

14.13 **Subscriber Contracts**. Grantee shall, upon written request, provide the City with any standard form residential Subscriber contract utilized by Grantee. If no such written contract exists, Grantee shall file with the City a document completely and concisely stating the length and terms of the Subscriber contract offered to customers. The length and terms of any standard form Subscriber contract(s) shall be available for public inspection during Normal Business Hours. A list of Grantee's current Subscriber rates and charges for Cable Service shall be maintained on file with City and shall be available for public inspection.

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

the Subscriber, credit such Subscriber pro rata for such interruption. For this purpose, every month will be assumed to have thirty (30) Days.

14.15 **Late Fees**. Grantee shall comply with all applicable state and federal laws with respect to any assessment, charge, cost, fee or sum, however characterized, that Grantee imposes upon a Subscriber for late payment of a bill. The City reserves the right to enforce Grantee's compliance with all Applicable Laws to the maximum extent legally permissible.

14.16 **Disputes**. All Subscribers and members of the general public may direct complaints, regarding Grantee's Service or performance to the chief administrative officer of the City or the chief administrative officer's designee, which may be a board or Commission of the City.

14.17 **Customer Bills**. Customer bills shall be designed in such a way as to present the information contained therein clearly and comprehensibly to Customers, and in a way that (A) is not misleading and (B) does not omit material information. Notwithstanding anything to the contrary in Section 14.10, above, Grantee may, in its sole discretion, consolidate costs on Customer bills as may otherwise be permitted by Section 622(c) of the Cable Act (47 U.S.C. §542(c)).

14.18 **Failure to Resolve Complaints**. Grantee must investigate and act upon any service complaint promptly and in no event later than twenty-four (24) hours after the problem becomes known. Grantee must address, and if feasible, resolve service complaints within three (3) calendar days.

14.19 **Maintain a Complaint Phone Line**. Grantee shall maintain a local or toll-free telephone Subscriber complaint line, available to its Subscribers twenty-four (24) hours per Day, seven (7) Days a week.

14.20 **Notification of Complaint Procedure**. Grantee shall have printed clearly and prominently on each Subscriber bill and in the customer service agreement provided for in Section 14.3, the twenty-four (24) hour Grantee phone number for Subscriber complaints. Additionally, Grantee shall provide information to customers concerning the procedures to follow when they are unsatisfied with measures taken by Grantee to remedy their complaint. This information will include the phone number of the City office or Person designated to handle complaints. Additionally, where possible Grantee shall state that complaints should be made to Grantee prior to contacting the City.

14.21 **Subscriber Privacy**.

(a) To the extent required by Minn. Stat. §238.084 Subd. 1(s) Grantee shall comply with the following: No signals including signals of a Class IV Channel may be transmitted from a Subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the Subscriber. The request for permission must be contained in a separate document with a prominent statement that the Subscriber is authorizing the permission in full knowledge of its provisions. Such written permission shall be for a limited period of time not to exceed

one (1) year which may be renewed at the option of the Subscriber. No penalty shall be invoked for a Subscriber's failure to provide or renew such permission. The permission shall be revocable at any time by the Subscriber without penalty of any kind whatsoever.

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

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

14.22 **Grantee Identification**. Grantee shall provide all customer service technicians and all other Grantee employees entering private property with appropriate picture identification so that Grantee employees may be easily identified by the property owners and Subscribers.

SECTION 15
SUBSCRIBER PRACTICES

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

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

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

(b) If any Subscriber terminates any monthly service because of failure of Grantee to render the service in accordance with this Franchise, Grantee shall refund to such Subscriber the proportionate share of the charges paid by the Subscriber for the services not received. This provision does not relieve Grantee of liability established in other provisions of this Franchise.

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

SECTION 16
COMPENSATION AND FINANCIAL PROVISIONS.

16.1 **Franchise Fees**. During the term of the Franchise, Grantee shall pay to the City a Franchise Fee of five percent (5%) of Gross Revenues. If any such law, regulation or valid rule alters the five percent (5%) Franchise Fee ceiling enacted by the Cable Act, then the City shall have the authority to (but shall not be required to) increase the Franchise Fee accordingly, provided such increase is for purposes not inconsistent with Applicable Law. In the event Grantee bundles or combines Cable Services (which are subject to the Franchise Fee) with non-Cable Services (which are not subject to the Franchise Fee) so that Subscribers pay a single fee for more than one (1) class of service resulting in a discount on Cable Services, Grantee agrees that for the purpose of calculation of the Franchise Fee, it shall allocate to Cable Service revenue no less than a pro rata share of the revenue received for the bundled or combined services. The pro rata share shall be computed on the basis of the published charge for each service in the bundled or combined classes of services when purchased separately.

(a) Franchise Fees shall be paid quarterly not later than forty-five (45) Days following the end of a given quarter. In accordance with Section 16 of this Franchise, Grantee shall file with the City a Franchise Fee payment worksheet, attached as Exhibit B, signed by an authorized representative of Grantee, which identifies Gross Revenues earned by Grantee during the period for which payment is made. No acceptance of any payment shall be construed as an accord that the amount paid is in fact, the correct amount, nor shall such acceptance of payment be construed as a release of any claim which the City may have for further or additional sums payable under the provisions of this section.

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

(c) Any Franchise Fees owing pursuant to this Franchise which remain unpaid more than forty-five (45) Days after the dates specified herein shall be delinquent and shall thereafter accrue interest at twelve percent (12%) per annum or two percent (2%) above prime lending rate as quoted by the Wall Street Journal, whichever is greater.

(d) In no event shall the Grantee be required to pay a Franchise Fee percentage in excess of that paid by incumbent cable provider.

16.2 **Auditing and Financial Records**. Throughout the term of this Franchise, the Grantee agrees that the City, upon reasonable prior written notice of not less than twenty (20) Days to the Grantee, may review such of the Grantee's books and records regarding the operation of the Cable System and the provision of Cable Service in the Franchise Area which are reasonably necessary to monitor and enforce Grantee's compliance with the provisions of this Franchise. Grantee shall provide such requested information as soon as possible and in no event more than thirty (30) Days after the notice unless Grantee explains that it is not feasible to meet this timeline and provides a written explanation for the delay and an estimated reasonable date for when such information will be provided. All such documents pertaining to financial matters that may be the subject of an inspection by the City shall be retained by the Grantee for a minimum period of six (6) years, pursuant to Minnesota Statutes Section 541.05. The Grantee shall not deny the City access to any of the Grantee's records on the basis that the Grantee's records are under the control of any parent corporation, Affiliated entity or a third party. The City may request in writing copies of any such records or books that are reasonably necessary, and the Grantee shall provide such copies within thirty (30) Days of the receipt of such request. One (1) copy of all reports and records required under this or any other section shall be furnished to the City at the sole expense of the Grantee. If the requested books and records are too voluminous, or for security reasons cannot be copied or removed, then the Grantee may request, in writing within ten (10) Days of receipt of such request, that the City inspect them at the Grantee's local offices or at one of Grantee's offices more convenient to City or its duly authorized agent. If any books or records of the Grantee are not kept in such office and not made available in copies to the City upon written request as set forth above, and if the City determines that an examination of such records is necessary for the enforcement of this Franchise, then all reasonable travel expenses incurred in making such examination shall be paid by the Grantee.

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

16.4 **Audit of Records**. The City or its authorized agent may at any time and at the City's own expense conduct an independent audit of the revenues of Grantee in order to verify the accuracy of Franchise Fees paid to the City. Grantee shall cooperate fully in the conduct of such audit and shall produce all necessary records related to the provision of Cable Services regardless of which corporate entity controls such records. In the event it is determined through such audit that Grantee has underpaid Franchise Fees in an amount of five percent (5%) or more than was due the City, then Grantee shall reimburse the City for the entire reasonable cost of the audit within thirty (30) days of the completion and acceptance of the audit by the City.

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

16.6 **Indemnification by Grantee.**

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

(b) Grantee shall contemporaneously with this Franchise execute an Indemnity Agreement in a form acceptable to the City attached hereto as Exhibit C, 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. This obligation includes any claims by another franchised cable operator against the City that the terms and conditions of this Franchise are less burdensome than another franchise granted by the City or that this Franchise does not satisfy the requirements of Applicable Law(s).

16.7 **Grantee Insurance**. Upon the Effective Date, Grantee shall, at its sole expense take out and maintain during the term of this Franchise public liability insurance with a company licensed to do business in the state of Minnesota with a rating by A.M. Best & Co. of not less than "A-" that shall protect the Grantee, City and its officials, officers, directors, employees and agents from claims which may arise from operations under this Franchise, whether such operations be by the Grantee, its officials, officers, directors, employees and agents or any subcontractors of Grantee. This liability insurance shall include, but shall not be limited to, protection against claims arising from bodily and personal injury and damage to property, resulting from Grantee's vehicles, products and operations. The amount of insurance for single limit coverage applying to bodily and personal injury and property damage shall not be less than Three Million Dollars ($3,000,000). The liability policy shall include:

(a) The policy shall provide coverage on an "occurrence" basis.

(b) The policy shall cover personal injury as well as bodily injury.

(c) The policy shall cover blanket contractual liability subject to the standard universal exclusions of contractual liability included in the carrier's standard endorsement as to bodily injuries, personal injuries and property damage.

(d) Broad form property damage liability shall be afforded.

(e) City shall be named as an additional insured on the policy.

(f) An endorsement shall be provided which states that the coverage is primary insurance with respect to claims arising from Grantee's operations under this Franchise and that no other insurance maintained by the Grantor will be called upon to contribute to a loss under this coverage.

(g) Standard form of cross-liability shall be afforded.

(h) An endorsement stating that the policy shall not be canceled without thirty (30) Days notice of such cancellation given to City

(i) City reserves the right to adjust the insurance limit coverage requirements of this Franchise no more than once every three (3) years. Any such adjustment by City will be no greater than the increase in the State of Minnesota Consumer Price Index (all consumers) for such three (3) year period.

(j) Upon the Effective Date, Grantee shall submit to City a certificate documenting the required insurance, as well as any necessary properly executed endorsements. The certificate and documents evidencing insurance shall be in a form acceptable to City and shall provide satisfactory evidence that Grantee has complied with all insurance requirements. Renewal certificates shall be provided to City prior to the expiration date of any of the required policies. City will not be obligated, however, to review such endorsements or certificates or other evidence of insurance, or to advise Grantee of any deficiencies in such documents and receipt thereof shall not relieve Grantee from, nor be deemed a waiver of, City's right to enforce the terms of Grantee's obligations hereunder. City reserves the right to examine any policy provided for under this paragraph or to require further documentation reasonably necessary to form an opinion regarding the adequacy of Grantee's insurance coverage.

SECTION 17
MISCELLANEOUS PROVISIONS.

17.1 **Posting and Publication**. Grantee shall assume the cost of posting and publication of this Franchise as such posting and publication is required by law and such is payable upon Grantee's filing of acceptance of this Franchise.

17.2 **Guarantee of Performance**. Grantee agrees that it enters into this Franchise voluntarily in order to secure and in consideration of the grant from the City of a five (5) year

Franchise. Performance pursuant to the terms and conditions of this Franchise is guaranteed by Grantee.

17.3 **Entire Agreement**. This Franchise contains the entire agreement between the parties, supersedes all prior agreements or proposals except as specifically set forth herein, and cannot be changed orally but only by an instrument in writing executed by the parties. This Franchise is made pursuant to Minnesota Statutes Chapter 238 and is intended to comply with all requirements set forth therein.

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

17.5 **Franchise Acceptance**. No later than forty-five (45) Days following City Council approval of this Franchise, Grantee shall execute and return to the City three (3) original franchise agreements. The executed agreements shall be returned to the City accompanied by performance bonds, and evidence of insurance, all as provided in this Franchise. 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. Grantee 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 Grantee shall therefore submit to the City at the time of acceptance of this Franchise, a check made payable to the City of Eden Prairie, Minnesota for all additional fees and costs incurred by the City. Within thirty (30) days of City Council approval, the City shall provide Grantee with a letter specifying such additional costs following approval of this Franchise by the City Council. In the event Grantee fails to accept this Franchise, or fails to provide the required documents and payments, this Franchise shall be null and void. The Grantee agrees that despite the fact that its written acceptance may occur after the Effective Date, the obligations of this Franchise shall become effective on the Effective Date.

17.6 **Amendment of Franchise**. Grantee and City may agree, from time to time, to amend this Franchise. Such written amendments may be made subsequent to a review session pursuant to Section 2.7 or at any other time if City and Grantee agree that such an amendment will be in the public interest or if such an amendment is required due to changes in federal, state or local laws; provided, however, nothing herein shall restrict City's exercise of its police powers.

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

To the City:	City Manager, City of Eden Prairie 8080 Mitchell Road Eden Prairie, MN 55344
Courtesy Copy to:	Southwest Suburban Cable Commission c/o Moss & Barnett (BTG) 150 South Fifth Street, Suite 1200 Minneapolis, MN 55402
To the Grantee:	CenturyLink Attn: Public Policy 1801 California Street, 10th Floor Denver, Colorado 80202
Courtesy Copy to:	Qwest Broadband Services, Inc. Attn: Public Policy 200 South Fifth Street, 21st Floor Minneapolis, MN 55402

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

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

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

17.10 **Abandonment of System**. Grantee may not abandon the System or any portion thereof used exclusively for Cable Services, without having first given three (3) months written notice to City and conforming to the City Code, as well as the state right-of-way rules, Minn. Rules, Chapter 7819. To the extent required by Minn. Stat. §238.084 Subd. 1 (w), Grantee shall compensate City for damages resulting from the abandonment.

17.11 **Removal After Abandonment**. In the event of Grantee's abandonment of the System used exclusively for Cable Services, City shall have the right to require Grantee to conform to the City Code, as well as the state right-of-way rules, Minn. Rules, Chapter 7819. If Grantee has failed to commence removal of System, or such part thereof as was designated by City, within thirty (30) Days after written notice of City's demand for removal consistent with City Code and Minn. Rules, Ch. 7819, is given, or if Grantee has failed to complete such removal within twelve (12) months after written notice of City's demand for removal is given City shall have the right to apply funds secured by the performance bond toward removal and/or declare all right, title, and interest to the System to be in City with all rights of ownership including, but not limited to, the right to operate the System or transfer the System to another for operation by it.

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

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

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

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

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

17.17 **Competitive Equity.** If any other Wireline MVPD enters into any agreement with the City to provide multi channel video programming or its equivalent to residents in the City, the City, upon written request of the Grantee, shall permit the Grantee to construct and/or operate its Cable System and provide multi channel video programming or its equivalent to Subscribers

in the City under the same agreement as applicable to the new MVPD. Within one hundred twenty (120) Days after the Grantee submits a written request to the City, the Grantee and the City shall enter into an agreement or other appropriate authorization (if necessary) containing the same terms and conditions as are applicable to the new Wireline MVPD.

FIRST READ at a regular meeting of the City Council of the City of Eden Prairie on the 18th day of January, 2016, and finally read and adopted and ordered published at a regular meeting of the City Council of said City on the 2nd day of February, 2016.

ATTEST:

CITY OF EDEN PRAIRIE, MINNESOTA

Kathleen Porta, City Clerk

Nancy Tyra-Lukens, Mayor

Published in the *Eden Prairie News* on the 11th day of February, 2015.

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

QWEST BROADBAND SERVICES, INC., D/B/A CENTURYLINK

Date:_____

By:_____

Its: _____

SWORN TO BEFORE ME this
___ day of _____, 201__.

_____
NOTARY PUBLIC

Exhibit A
Free Cable Service to Public Buildings

ANSWER POINT,PUBLIC SAFETY	8080 MITCHELL RD OFC
CARNELIAN HOUSE,*	7525 CARNELIAN LN APT. CMCL
CENTER,EDEN PRAIRIE FAMILY	8950 EDEN PRAIRIE RD
CENTER,EDEN PRAIRIE SENIOR	8950 EDEN PRAIRIE RD
CITY HALL,EDEN PRAIRIE	8080 MITCHELL RD OFC
CITY OF,EDEN PRAIRIE	7801 MITCHELL RD
COMMUNITY CENTER,EDEN PRAI	16700 VALLEY VIEW RD
DISPATCH,EDEN PRAIRIE	8080 MITCHELL RD APT COPS
FIRE STATION,EDEN PRAIRIE	11800 TECHNOLOGY DR
POLICE,EDEN PRAIRIE	7900 MITCHELL RD
PUBLIC WORKS,EDEN PRAIRIE	7845 MITCHELL RD
SOCS CHATHAM WA,Y	6204 CHATHAM WAY
LIBRARY,EDEN PRAIRIE	479 PRAIRIE CENTER DR
DISTRICT,EDEN PRA SCHOOL	8100 SCHOOL RD APT FIBER
ELEM SCHOOL,OAK POINT INTE	13400 STARING LAKE PKWY
ELEM,CEDAR RIDGE	8905 BRAXTON DR
ELEMENTARY,EDEN L	12000 ANDERSON LAKES PKWY
ELEMENTARY,PRAIRIE VIEW	17255 PETERBORG RD
HIGH SCHOOL, EDEN PRAIRIE	17185 VALLEY VIEW RD
HIGH SCHOOL,FOREST	13708 HOLLY RD
IMMERSION, SPANISH	8100 SCHOOL RD
MIDDLE SCHOOL,CENTRAL	8025 SCHOOL RD
TECH COLLEGE,HENNEPIN	13100 COLLEGEVIEW RD
FIRE STATION #1,EDEN PRAIR	14800 SCENIC HEIGHTS RD
FIRE STATION #4,EDEN PRAIR	17920 LINWOOD CT

Exhibit B
Franchise Fee Payment Worksheet

TRADE SECRET – CONFIDENTIAL

	Month/Year	Month/Year	Month/Year	Total
A la Carte Video Services				
Audio Services				
Basic Cable Service				
Installation Charge				
Bulk Revenue				
Expanded Basic Cable Service				
Pay Service				
Pay-per-view				
Guide Revenue				
Franchise Fee Revenue				
Advertising Revenue				
Home Shopping Revenue				
Digital Services				
Inside Wiring				
Other Revenue				
Equipment Rental				
Processing Fees				
PEG Fee				
FCC Fees				
Bad Debt				
Late Fees				
REVENUE				
Fee Calculated				

Fee Factor: 5%

Exhibit C
Indemnity Agreement

INDEMNITY AGREEMENT made this ____ day of _____, 201__, by and between Qwest Broadband Services, Inc., a Delaware Corporation, party of the first part, hereinafter called "CenturyLink," and the City of Eden Prairie, a Minnesota Municipal Corporation, party of the second part, hereinafter called "City."

WITNESSETH:

WHEREAS, the City of Eden Prairie has awarded to Qwest Broadband Services, Inc. a franchise for the operation of a cable communications system in the City of Eden Prairie; and

WHEREAS, the City has required, as a condition of its award of a cable communications franchise, that it be indemnified with respect to all claims and actions arising from the award of said franchise,

NOW THEREFORE, in consideration of the foregoing promises and the mutual promises contained in this agreement and in consideration of entering into a cable television franchise agreement and other good and valuable consideration, receipt of which is hereby acknowledged, CenturyLink hereby agrees, at its sole cost and expense, to fully indemnify, defend and hold harmless the City, its officers, boards, commissions, employees and agents against any and all claims, suits, actions, liabilities and judgments for damages, cost or expense (including, but not limited to, court and appeal costs and reasonable attorneys' fees and disbursements assumed or incurred by the City in connection therewith) arising out of the actions of the City in granting a franchise to CenturyLink. This includes any claims by another franchised cable operator against the City that the terms and conditions of the CenturyLink franchise are less burdensome than another franchise granted by the City or that the CenturyLink Franchise does not satisfy the requirements of applicable federal, state, or local law(s). The indemnification provided for herein shall not extend or apply to any acts of the City constituting a violation or breach by the City of the contractual provisions of the franchise ordinance, unless such acts are the result of a change in applicable law, the order of a court or administrative agency, or are caused by the acts of CenturyLink.

The City shall give CenturyLink reasonable notice of the making of any claim or the commencement of any action, suit or other proceeding covered by this agreement. The City shall cooperate with CenturyLink in the defense of any such action, suit or other proceeding at the request of CenturyLink. The City may participate in the defense of a claim, but if CenturyLink provides a defense at CenturyLink's expense then CenturyLink shall not be liable for any attorneys' fees, expenses or other costs that City may incur if it chooses to participate in the defense of a claim, unless and until separate representation is required. If separate representation to fully protect the interests of both parties is or becomes necessary, such as a conflict of interest, in accordance with the Minnesota Rules of Professional Conduct, between the City and the counsel selected by CenturyLink to represent the City, CenturyLink shall pay, from the date such separate representation is required forward, all reasonable expenses incurred by the City in defending itself with regard to any action, suit or proceeding indemnified by CenturyLink. Provided, however, that in the event that such separate representation is or becomes necessary,

and City desires to hire counsel or any other outside experts or consultants and desires CenturyLink to pay those expenses, then City shall be required to obtain CenturyLink's consent to the engagement of such counsel, experts or consultants, such consent not to be unreasonably withheld. Notwithstanding the foregoing, the parties agree that the City may utilize at any time, at its own cost and expense, its own City Attorney or outside counsel with respect to any claim brought by another franchised cable operator as described in this agreement.

The provisions of this agreement shall not be construed to constitute an amendment of the cable communications franchise ordinance or any portion thereof, but shall be in addition to and independent of any other similar provisions contained in the cable communications franchise ordinance or any other agreement of the parties hereto. The provisions of this agreement shall not be dependent or conditioned upon the validity of the cable communications franchise ordinance or the validity of any of the procedures or agreements involved in the award or acceptance of the franchise, but shall be and remain a binding obligation of the parties hereto even if the cable communications franchise ordinance or the grant of the franchise is declared null and void in a legal or administrative proceeding.

It is the purpose of this agreement to provide maximum indemnification to City under the terms set out herein and, in the event of a dispute as to the meaning of this Indemnity Agreement, it shall be construed, to the greatest extent permitted by law, to provide for the indemnification of the City by CenturyLink. This agreement shall be a binding obligation of and shall inure to the benefit of, the parties hereto and their successor's and assigns, if any.

QWEST BROADBAND SERVICES, INC.

Dated: _____ _____, 201__ By: _____

Its: _____

STATE OF LOUISIANA)
) SS
)

The foregoing instrument was acknowledged before me this _____ day of _____ 201__, by _____, the _____ of Qwest Broadband Services, Inc., a Delaware Corporation, on behalf of the corporation.

_____
Notary Public
Commission Expires _____

CITY OF EDEN PRAIRIE, MINNESOTA

By _____
Its _____