# CITY OF WEST ST. PAUL, MINNESOTA

# ORDINANCE GRANTING A CABLE TELEVISION FRANCHISE

# TO

# COMCAST OF ST. PAUL, INC.

**JULY 30, 2020**

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**CITY OF WEST ST. PAUL**
**DAKOTA COUNTY, MINNESOTA**

**ORDINANCE NO. 20-017**

**AN ORDINANCE RENEWING THE GRANT OF A FRANCHISE TO COMCAST OF ST. PAUL, INC. TO OPERATE AND MAINTAIN A CABLE SYSTEM IN THE CITY OF WEST ST. PAUL, MINNESOTA; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF A FRANCHISE; PROVIDING FOR CITY REGULATION AND ADMINISTRATION OF THE CABLE SYSTEM; TERMINATING THE PRIOR FRANCHISE**

## FINDINGS

1. The City of West St. Paul, Minnesota ("City"), pursuant to applicable federal and state law, is authorized to grant one (1) or more nonexclusive cable television franchises to construct, operate, maintain and reconstruct cable television systems within the City limits.

2. Comcast of St. Paul, Inc., a Delaware corporation ("Grantee") has operated a Cable System in the City, under a cable television franchise granted pursuant to a Cable Television Franchise Ordinance approved on or about April 1, 2000.

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

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

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

6. The City has exercised its authority under Minnesota law to enter into a Joint and Cooperative Agreement, and an Amended Joint and Cooperative Agreement, with other cities authorized to grant cable communications franchises, and has delegated authority to the Northern Dakota County Cable Communications Commission to make recommendations to the City regarding this Franchise and to be responsible for the ongoing administration and enforcement of this Franchise as herein provided.

**NOW, THEREFORE, THE CITY OF WEST ST. PAUL DOES ORDAIN** that a franchise is hereby granted to Comcast of St. Paul, Inc., to operate and maintain a Cable System in the City upon the following terms and conditions:

## SECTION 1 DEFINITIONS

For the purpose of this Franchise, the following, terms, phrases, words, derivations and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory. The word "may" is directory and discretionary and not mandatory.

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

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

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

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

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

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

(a) a facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;

(b) a facility that serves Subscribers without using any Streets;

(c) a facility of a common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. § 201 et seq., except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of Video Programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services;

(d) an open video system that complies with section 47 U.S.C. § 573; or

(e) any facilities of any electric utility used solely for operating its electric utility system.

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

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

1.7 "City" means the City of West St. Paul, a municipal corporation in the State of Minnesota, acting by and through its City Council, or its lawfully appointed designee.

1.8 "City Code" means the Municipal Code of the City of West St. Paul, Minnesota, as may be amended from time to time.

1.9 "Commission" means the Northern Dakota County Cable Communications Commission or its successors or delegations, including representatives of the Member Cities as may exist pursuant to a then valid and existing Joint and Cooperative Agreement and Amended Joint and Cooperative Agreement between Member Cities.

1.10 "Converter" means an electronic device, including Digital Transport Adapters, which converts signals to a frequency not susceptible to interference within the television receiver of a Subscriber, and by an appropriate Channel selector also permits a Subscriber to view all Cable Service signals.

1.11 "City Council" means the governing body of the City of West St. Paul, Minnesota.

1.12 "Day" means a calendar day, unless otherwise specified.

1.13 "Drop" means the cable that connects the Subscriber terminal to the nearest feeder cable of the cable.

1.14 "Effective Date" means the date adopted by the last Member City Council, or the date executed by both parties in accordance with Section 17.6 herein, whichever is later.

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

1.16 "Franchise" means the right granted by this Franchise Ordinance and the regulatory and contractual relationship established hereby.

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

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

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

1.20 "Gross Revenues" means, and shall be construed broadly to include all revenues derived directly or indirectly by Grantee and/or an Affiliated Entity that is the cable operator of the Cable System, from the operation of Grantee's Cable System to provide Cable Services within the City. Gross Revenues include, by way of illustration and not limitation:

(a) monthly fees for Cable Services, regardless of whether such Cable Services are provided to residential or commercial customers, including revenues derived from the provision of all Cable Services (including but not limited to pay or premium Cable Services, pay-per-view, pay-per-event, and video-on-demand Cable Services);

(b) fees paid to Grantee for Channels designated for commercial/leased access use and shall be allocated on a pro rata basis using total Cable Service Subscribers within the City;

(c) Converter, digital video recorder, remote control, and other Cable Service equipment rentals, leases, or sales;

(d) installation, disconnection, reconnection, change-in service, "snow-bird" fees;

(e) Advertising Revenues as defined herein;

(f) late fees, convenience fees, and administrative fees;

(g) other service fees such as HD fees, convenience fees, broadcast fees, regional sports fees, home tech support fees, bill payment fees for in-person or phone payments, additional outlet fees, and related charges relating to the provisions of Cable Service;

(h) revenues from program guides and electronic guides;

(i) Franchise Fees;

(j) FCC regulatory fees;

(k) except as provided in subsection (ii) below, any fee, tax or other charge assessed against Grantee by municipality, which Grantee chooses to pass through and collect from its Subscribers; and

(l) commissions from home shopping channels and other Cable Service revenue sharing arrangements, which shall be allocated on a pro rata basis using total Cable Service Subscribers within the City.

(i) "Advertising Revenues" shall mean revenues derived from sales of advertising that are made available to Grantee's Cable System Subscribers within the City and shall be allocated on a pro rata basis using total Cable Service Subscribers reached by the advertising. Additionally, Grantee agrees that Gross

Revenues subject to Franchise Fees shall include all commissions, representative fees, Affiliated Entity fees, or rebates paid to National Cable Communications and Comcast Spotlight or their successors associated with sales of advertising on the Cable System within the City allocated according to this paragraph using total Cable Service Subscribers reached by the advertising.

(ii) "Gross Revenues" shall not include:

1. actual bad debt write-offs, except any portion which is subsequently collected, which shall be allocated on a *pro rata* basis using Cable Services revenue as a percentage of total Subscriber revenues within the City;

2. Public, Education and Government (PEG) Fees; and

3. unaffiliated third-party advertising sales agency fees which are reflected as a deduction from revenues.

Grantee shall allocate fees and revenues generated from bundled packages and services to cable revenues pro rata based on current published rate card for the packaged services delivered on a stand-alone basis as follows:

(i) To the extent revenues are received by Grantee for the provision of a discounted bundle of services which includes Cable Services and non-Cable Services, Grantee shall calculate revenues to be included in Gross Revenues using a GAAP methodology that allocates revenue, on a pro rata basis when comparing the bundled service price and its components to the sum of the published rate card, except as required by specific federal, state or local law (for example, it is expressly understood that equipment may be subject to inclusion in the bundled price at full rate card value). The City reserves its right to review and to challenge Grantee's calculations.

(ii) Grantee reserves the right to change the allocation methodologies set forth in this section in order to meet the standards required by governing accounting principles as promulgated and defined by the Financial Accounting Standards Board ("FASB"), Emerging Issues Task Force ("EITF") and/or the U.S. Securities and Exchange Commission ("SEC"). Grantee will explain and document the required changes to the City upon request or as part of any audit or review of Franchise Fee payments, and any such changes shall be subject to the next subsection below.

(iii) Resolution of anydisputes over the classification of revenue should first be attempted by agreement of the parties, but should no resolution be reached, the parties agree that reference shall be madeto GAAP as promulgated and defined by the Financial Accounting Standards Board ("FASB"), Emerging Issues Task Force ("EITF") and/or the U.S. Securities and Exchange Commission ("SEC"). Notwithstanding the foregoing, the City reserves its right to challenge Grantee's calculation of Gross Revenues, including the interpretation of GAAP as promulgated and defined by the FASB, EITF and/or the SEC.

1.21 "Member Cities" means those cities that are parties to a then valid and existing joint powers agreement which, at the time of granting this Franchise, include Inver Grove Heights, Lilydale, Mendota, Mendota Heights, South St. Paul, Sunfish Lake, and West St. Paul.

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

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

1.24 "PEG" means public, education and government.

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

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

1.27 "Subscriber" means a Person who lawfully receives Cable Service.

1.28 "Video Programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

1.29 "Wireline MVPD" means any entity, including the City, 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, which could also include the City. For purposes of this Franchise, the term "Wireline MVPD" shall not be limited to entities defined by the FCC as "multichannel video programming distributors" and shall include entities that provide multiple Channels of Video Programming via open video systems, as defined by the FCC, but it is the intent of the Grantee and the City that the term Wireline MVPD shall not include small cell providers, unless the City has the legal authority under Applicable Law to regulate or to impose cable franchise obligations upon such small cell providers.

## SECTION 2 FRANCHISE

2.1 **Grant of Franchise.** The City hereby authorizes Grantee to occupy or use the City's 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. Unless this Franchise has expired pursuant to Section 2.8 herein or this Franchise is otherwise terminated pursuant to Section 11.2

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

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

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

2.4 **Franchise Area**. This Franchise is granted for the Franchise Area defined herein. Grantee shall extend its Cable System to provide Service to any residential unit in the City in accordance with Section 6.7 herein.

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

2.6 **Periodic Public Review of Franchise**. The City may conduct a public review of the Franchise. The purpose of any such review shall be to ensure, with the benefit of full opportunity for public comment, that the Grantee continues to effectively serve the public in accordance with Applicable Law, and considering any new cable technology, Grantee's performance with the requirements of this Franchise, local regulatory environment, community needs and interests, and

other such factors. So long as Grantee receives reasonable notice, Grantee shall cooperate in good faith. The review shall not operate to modify or change any provision of this Franchise without mutual written consent in accordance with Section 17.7 of this Franchise. The City and Grantee shall each be responsible for their own costs regarding the conduct of, or cooperation with, any such periodic review.

2.7 **Transfer of Ownership.**

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

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

(c) Any sale or transfer of stock in Grantee so as to create a new controlling interest in the System shall be subject to the requirements of this Section 2.7. The term "controlling interest" as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.

(d) 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.

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

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

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

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

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

(c) invite additional franchise applications or proposals;

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

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

2.9 **Right to Require Removal of Property**. At the expiration of the term for which this Franchise is granted, provided no renewal is granted, or upon its forfeiture or revocation as provided for herein, the City shall have the right to require Grantee to remove at Grantee's own expense all or any part of the Cable System from all 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. However, Grantee shall have no obligation to remove the Cable System where it utilizes the system to provide other non-Cable Services and has any other authority under Applicable Law to maintain facilitates in the public rights-of-way, or where Grantee is able to find a purchaser of the Cable System who holds such authorization.

2.10 **Continuity of Service Mandatory**. It shall be the right of all Subscribers to receive Cable Service in accordance with the terms of this Franchise and Applicable Law. In the event that Grantee elects to overbuild, rebuild, modify, or transfer the system in accordance with Section 2.7, or the City revokes or fails to renew the Franchise, Grantee shall make its best effort to ensure that all Subscribers receive continuous uninterrupted service, regardless of the circumstances, while the Franchise remains effective. In the event of expiration, revocation/termination, purchase, lease-purchase, condemnation, acquisition, taking over or holding of plant and equipment, sale, lease, or other transfer to any other Person, including any other grantee of a cable 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 and the City Code, 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, Grantee expressly agrees that it will construct, operate and maintain its Cable System in compliance with, and subject to, the requirements of the City Code,

including by way of example and not limitation, those requirements governing the placement of Grantee's Cable System; and with other applicable City Codes, and will obtain, pay for and maintain all permits and bonds required by the City Code in addition to those required in this Franchise.

(b) All wires, conduits, cable and other property and facilities of Grantee shall be so located, constructed, installed and maintained as not to endanger or unnecessarily interfere with the usual and customary trade, traffic and travel upon, or other use of the 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 professional manner in accordance with all applicable requirements of the City Code and Applicable Law. All wires, conduits and cables shall be installed, where possible, parallel with electric and telephone lines. Multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering considerations.

(d) Nothing in this Franchise shall be construed to prevent the City from constructing, maintaining, repairing or relocating sewers; grading, paving, maintaining, repairing, relocating and/or altering any Street; constructing, laying down, repairing, maintaining or relocating any water mains; or constructing, maintaining, relocating, or repairing any sidewalk or other public work.

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

3.3 **Non-Interference.** Grantee shall exert its best efforts to construct and maintain a Cable System so as not to interfere with other 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.**

(a) 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:

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

(ii) Grantee is unable to get pole clearance;

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

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

(b) If an ordinance is passed which involves placing underground certain utilities including Grantee's cable plant which is then located overhead, Grantee shall participate in such underground project and shall remove poles, cables and overhead wires if requested to do so and place facilities underground. The City and Grantee shall comply with the provisions of Minn. Rules, Chapter 7819.3100 governing the relocation of existing facilities. Nothing in this Franchise shall mandate that City provide reimbursement to Grantee for the costs of such relocation and removal, and the Grantee shall not seek damages or other compensation from the City for such compliance, unless reimbursement is mandatory under Minn. Rules, Chapter 7819.3100. However, if the City makes available funds for the cost of placing facilities underground, nothing herein shall preclude the Grantee from participating in such funding to the extent consistent with the City Code or Applicable Laws. If non-City funds, such as funds from residents or state or federal grant funding, are made available to place electric or telephone lines underground, nothing herein shall prohibit Grantee from participating in such funding.

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

3.6 **Maintenance and Restoration.**

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

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

(b) Maintenance. Grantee shall maintain all above ground improvements that it places on City Streets 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 Streets, 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) Public Property. Grantee shall relocate its System and facilities in accordance with the City Code. In addition, if, during the term of the Franchise, the City or any government entity elects or requires a third party to alter, repair, realign, abandon, improve, vacate, reroute or change the grade of any Street 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. The City and Grantee shall comply with the provisions of Minn. Rules, Chapter 7819.3100 governing the relocation of existing facilities. Nothing in this Franchise shall mandate that the City provide reimbursement to Grantee for the costs of such relocation and removal, and the Grantee shall not seek damages or other compensation from the City for such compliance, unless reimbursement is mandatory under Minn. Rules, Chapter 7819.3100. However, if the City makes available funds for the cost of placing facilities underground, nothing herein shall preclude the Grantee from participating in such funding to the extent consistent with the City Code or Applicable Laws. If non-City funds, such as funds from residents or state or federal grant funding, are made available to place electric or telephone lines underground, nothing herein shall prohibit Grantee from participating in such funding.

(b) Utilities and Other Franchisees. If, during the term of the Franchise, another entity which holds a franchise or any utility requests Grantee to remove or relocate such facilities to accommodate the construction, maintenance or repair of the requesting party's facilities,

or their more efficient use, or to "make ready" the requesting party's facilities for use by others, or because Grantee is using a facility which the requesting party has a right or duty to remove, Grantee shall do so. The companies involved may decide among themselves who is to bear the cost of removal or relocation, pursuant to City Code, and provided that the City shall not be liable for such costs.

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

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

(e) Procedure for Removal of Cable. Grantee shall not remove any underground cable or conduit which requires trenching or other opening of the 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 Grantee to arrange for such temporary wire changes.

## SECTION 4 REMOVAL OR ABANDONMENT OF SYSTEM

4.1 **Removal of Cable System.** In the event that: (1) the use of the Cable System is discontinued for any reason for a continuous period of twelve (12) months; or (2) the Cable System has been installed in a Street without complying with the requirements of this Franchise or the City

Code, Grantee, at its expense shall, at the demand of the City remove promptly from the Streets all of the Cable System other than any which the City may permit to be abandoned in place. In the event of any such removal Grantee shall promptly restore the Street to a condition as nearly as possible to its prior condition or other public places in the City from which the System has been removed. However, Grantee shall have no obligation to remove the Cable System where it utilizes the system to provide other non-Cable Services and has any other authority under Applicable Law to maintain facilities in the Street, or where Grantee is able to find a purchaser of the Cable System who holds such authorization.

4.2 **Abandonment of Cable System.** In the event of Grantee's abandonment of the Cable System, City shall have the right to require Grantee to comply with the state right-of-way rules, 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, or such part thereof as was designated by the City, within thirty (30) Days after written notice of the 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 the City's demand for removal is given, the City shall have the right to apply funds secured by the Bond toward removal and/or declare all right, title, and interest to the Cable System for the City with all rights of ownership including, but not limited to, the right to operate the Cable System or transfer the Cable System to another for operation by it.

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

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

(b) Declare the System abandoned and cause the System, or such part thereof as the City shall designate, to be removed at no cost to the City. The cost of said removal shall be recoverable from the 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 facilities and equipment from within the dwelling of a Subscriber who owns such dwelling upon his or her written request, except as provided by Applicable Law. Such Subscribers shall be responsible for any costs incurred by Grantee in removing the facilities and equipment.

4.5 **System Construction and Equipment Standards.** The Cable System shall be installed and maintained in accordance with standard engineering practices and shall conform, when

applicable, with the National Electrical Safety Code, the National Electrical Code and the FCC's Rules and Regulations.

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

## SECTION 5 SYSTEM DESIGN AND CAPACITY

5.1 **Availability of Signals and Equipment.**

(a) The Cable System utilizes a fiber to the fiber node architecture, with fiber optic cable deployed from Grantee's headend to Grantee's fiber nodes, tying into Grantee's coaxial Cable System serving Subscribers. The System shall pass a minimum of 750MHz (with a minimum passband of between 50 and 750 MHz) and shall be maintained to provide to Subscribers a minimum of at least two hundred (200) or more activated downstream video Channels, or such comparable video viewing capability as is provided in light of developing technologies and video distribution practices in the future.

(b) The entire System shall be technically capable of transmitting industry-standard digital television signals in a manner and quality consistent with applicable FCC regulations.

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

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

5.3 **System Specifications.**

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

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

containing methods of EAS message distribution, insofar as the local plan is consistent with Applicable Laws and the EAS Plan.

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

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

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

(a) Initial proof of performance for any construction;

(b) Tests in response to Subscriber complaints; and

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

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

5.5 **Special Testing**.

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

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

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

## SECTION 6 PROGRAMMING AND SERVICES

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

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

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

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

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

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

6.6 **Line Extension.**

(a) Grantee shall construct and operate its Cable System so as to provide Cable Service within the Franchise Area where there exists a density equivalent of seven (7) dwelling units per one-quarter (1/4) mile of feeder cable as measured from the nearest active plant of the Cable System if the extension is to be constructed using aerial plant, and nine (9) dwelling units per one-quarter (1/4) mile of feeder cable as measured from the nearest active plant if the extension is to be constructed using underground plant. The City, for its part, shall endeavor to exercise reasonable efforts to require developers and utility companies to provide the Grantee with at least fifteen (15) Days advance notice of an available open trench for the placement of necessary cable.

(b) Any residential unit located within one hundred twenty-five (125) feet from the nearest point of access on the Street from which the Cable System is designed to serve the site shall be connected to the Cable System at no charge other than the standard installation charge. Grantee shall, within fifteen (15) Days request by any potential Subscriber residing in City beyond the one hundred twenty-five (125) foot limit, provide a quote identifying the costs and construction schedule associated with extending service to such Subscriber. Grantee shall perform the extension of service as soon as reasonably possible and in no event later than the date committed in the quote, excluding events covered by Section 17.9 herein. The Subscriber shall pay the net additional Drop costs, unless the Grantee agrees to waive said costs. To the extent consistent with Applicable Laws, Grantee agrees that it shall impose installation costs for non-standard installations in a uniform and nondiscriminatory manner throughout the City.

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

## SECTION 7 LOCAL PEG PROGRAMMING

7.1 **Number of PEG Channels.**

(a) Upon the Effective Date of this Franchise, Grantee will continue to makeavailable a minimum of seven (7) PEG Channels in Standard Definition ("SD"). Throughout the term of this Franchise Grantee shall provide the PEG Channels on the Basic Cable Service tier or such other most subscribed tier of Cable Service (within the Franchise Area) as may be offered by Grantee in accordance with Applicable Law.

(b) For purposes of this Franchise, a high definition ("HD") signal refers to a television signal delivering picture resolution of either 720p or greater, or such other resolution in the same range that Grantee commonly utilizes for other similar programming Channels.

**7.2 HD PEG Channels.**

(a) Within ninety (90) Days of the Effective Date of this Franchise, Grantee shall provide five (5) SD PEG Channels and two (2) HD PEG Channels to be shared by the Commission's seven (7) Member Cities.

(b) By January 1, 2022, and after ninety (90) Days written notice to the Grantee, which notice Commission may send on or before October 1, 2021, Grantee shall provide five (5) SD PEG Channels and three (3) HD PEG Channels to be shared by the Commission's seven (7) Member Cities. Following implementation of this Section 7.2(b), the Grantee shall provide a total of eight (8) PEG Channels ((5) SD / (3) HD).

(c) The HD PEG Channels may duplicate the SD PEG Channels or may be programmed with different "best of" content, based on Commission's sole discretion.

(d) On or after the fifth (5th) anniversary of the Effective Date of this Franchise and after ninety (90) Days written notice to the Commission, Grantee may require that the Commission give back one (1) SD PEG Channel. Following implementation of this Section 7.2(d), the Commission will have four (4) SD PEG Channels and three (3) HD PEG Channels to be shared by the Commission's seven (7) Member Cities.

(e) If Grantee terminates all SD Channels and SD Cable Services and provides all Cable Services to all Subscribers in HD only, and after ninety (90) Days written notice to the Commission, Grantee shall provide four (4) HD PEG Channels to be shared by the Commission's seven (7) Member Cities.

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

(g) The Commission shall pay for and be responsible for all HD playback servers to be located at 5845 Blaine Avenue, Inver Grove Heights, MN ("Playback Facility"). Grantee agrees that it shall be responsible for costs associated with the provision of encoders or other equipment necessary to receive HD/SD signals at the headend, and to convert PEG HD signals to SD consistent with the historic practice between the parties.

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

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

7.5 **PEG Channel Locations**.

(a) Grantee shall continue cablecasting PEG programming on the Cable System on the same Channel locations as such programming is cablecast within the City as of the Effective Date. Current SD PEG Channel locations as of the Effective Date as well as the location of the first two (2) HD PEG Channels to be provided under Section 7.2 are listed

on Exhibit A. Grantee agrees not to change these PEG Channel locations more than two (2) times during the term of this Franchise unless required by law for other programmers with specific Channel number rights or pursuant to an overall Channel reorganization of the entire Channel lineup. In no event shall any PEG Channel relocations be made prior to ninety (90) days written notice to the City by Grantee, except for circumstances beyond Grantee's control. If relocated, Grantee will work in good faith with the City to identify new Channel locations such that the PEG Channels will be located within reasonable proximity to other broadcast or news Channels where available Channel numbers allow.

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

(c) In the event Grantee requires relocation of a PEG Channel pursuant to Section 7.5(a), Grantee shall provide a rebranding reimbursement grant of One Thousand Five Hundred and No/100 Dollars ($1,500) per relocated Channel.

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

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

7.8 **PEG Monitoring.** Grantee shall continue to provide the capability, without charge, for Commission representatives at the four (4) City Hall locations and the Commission's master control facility listed in Exhibit C, to monitor and verify the audio and visual quality of PEG Channels received by Subscribers as well as the existing connections and equipment at the Commission's master control facility. This will include equipment comparable to that deployed to residential cable Subscribers that will allow the Commission to verify the accuracy of EPG listings for the PEG Channels consistent with what is currently provided. Grantee shall also maintain one (1) feed to the Commission office to provide the ability to monitor Subscriber services and address Subscriber concerns which feed shall include all cable boxes and platforms (i.e. Xfinity X1).

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

(a) The Commission may transmit signals for the PEG Channels in "real time" upstream from the four (4) City Hall locations listed in Exhibit C to the Commission's playback facility currently located at 5845 Blaine Avenue, Inver Grove Heights, MN ("Playback Facility") to Grantee's hub and head-end using existing fiber connections without additional charge or offsets from Grantee. Grantee shall continue to provide without charge or offsets, fiber backhaul and transmitter/receiver equipment for live PEG programming from City Halls as is the practice on the Effective Date of this Franchise.

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

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

(ii) The Commission shall provide any necessary encoders, decoders or similar devices and shall configure equipment and connections so that signals can be transmitted to the Playback Facility.

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

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

7.10 **Interconnection with other Twin Cities PEG Stations.** Grantee shall continue to make the metro area fiber ring known as the PRISMA Ring available to the City, without charge, as long

as the PRISMA Ring remains serviceable. The City may use the PRISMA Ring (or its equivalent) to send and receive live and recorded programming to/from other Twin Cities PEG stations for as long as the network remains viable. Grantee shall provide City access to the PRISMA Ring at an agreed upon demarcation point. Grantee will provide use of and maintain the PRISMA Ring without charge, but Grantee will not be obligated to replace network equipment on the PRISMA Ring or for any equipment on the City's side of the demarcation point. Grantee agrees to continue to provide, without charge or offsets, use of Grantee's Converged Regional Area Network (C-RAN) for delivery of live and recorded programming to and from the entities listed on Exhibit B, limited to six (6) multi-cast IP Channels. This obligation shall terminate if Grantee no longer utilizes the C-RAN for its own business purposes. Grantee shall have no obligation to replace any network equipment currently located in its headend facility or at the City or Commission facility necessary to deliver or receive such programming over the C-RAN. Replacement of any decoding equipment necessary to receive the programming via the C-RAN will be the responsibility of the City and will require Grantee's approval to ensure equipment compatibility. If there are incremental equipment and maintenance costs specific to the PEG use of the C-RAN, Grantee will notify the City of such costs and allow the City the option of reimbursing Grantee for such costs or to cease using the C-RAN. Grantee shall not be responsible for providing a specific performance level over the C-RAN or resolving any transmission issues caused by incompatibility of audio or video file formats with interconnected equipment.

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

(a) that the City desires the capacity to allow Subscribers in the City to receive PEG programming (video or character generated) which may originate from schools, City facilities, other government facilities or other designated facilities (other than those indicated in paragraph 7.9); or

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

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

the City will give Grantee written notice detailing the point of origination and the capability sought by the City. After receipt of such notice by Grantee, Grantee and the City may enter into an agreement which compensates Grantee in accordance with Applicable Law, for new sites added or upgraded connections. After such an agreement has been executed, Grantee will implement any necessary Cable System changes within a reasonable period of time. Nothing herein prevents the City, or a private contractor retained by the City, from constructing said connection, as long as such connection does not interconnect with Grantee's Cable System without Grantee's consent or interfere with Grantee's Cable System.

7.12 **PEG Channel Carriage.**

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

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

7.13 **PEG Programming Financial Support.**

(a) During the term of the Franchise, Grantee shall pay quarterly to the Commission a PEG Fee in an amount equal to two and one-quarter percent (2.25%) of its quarterly Gross Revenues, for the duration of this Franchise. Payments pursuant to this subsection shall be paid to the Commission on the same schedule and including the same payment worksheets as the Franchise Fee payments set forth in Section 16.1(a-c) of this Franchise.

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

(c) The PEG Fee is not part of the Franchise Fee and instead falls within one or more of the exceptions in 47 U.S.C. § 542, unless the PEG Fee is used by City or Commission in violation of Applicable Law. The PEG Fee may be categorized, itemized, and passed through to Subscribers as permissible, in accordance with 47 U.S.C. § 542 or other Applicable Laws.

7.14 **PEG Technical Quality and Support.**

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

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

(c) Grantee agrees to continue its practice of providing to the Commission three (3) satellite feeds from Grantee's headend facility and/or hub site locations directly to the Commission's Playback Facility without charge to Commission. The Commission shall be responsible for obtaining any necessary carriage and license agreements for the programming aired on its PEG Channels to the extent the content providers require such agreements. The Commission shall pay any license fees, copyright fees and other costs of the programming provider. If Grantee receives a demand to cease and desist from providing any programming content to the Commission under this section or the source of the programming ceases to operate, Grantee may terminate such programming immediately without prior notice, but will provide notice that such programming has been terminated as soon as possible. If Grantee ceases to maintain the satellite reception facility through which the programming is received, Grantee will give the Commission sixty (60) days prior notice of the discontinuation to allow the Commission to obtain the programming from another source.

7.15 **Change in Technology**. In the event Grantee makes any change in the Cable System and related equipment and facilities or in its signal delivery technology, which requires the City to obtain new equipment in order to be compatible with such change for purposes of transport and delivery of the PEG Channels, Grantee shall, at its own expense and without charge to the City or its designated entities, purchase such equipment as may be necessary to facilitate the cablecasting of the PEG Channels in accordance with the requirements of the Franchise.

7.16 **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 functions and capacity remain available, operate reliably and satisfy all applicable technical standards and related obligations of the Franchise without charge to the City or its designated entities.

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

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

8.2 **Delegation of Authority to Regulate**. The City reserves the right to delegate its regulatory authority wholly or in part to another governmental entity, including, but not limited to, an entity which may be formed to regulate several franchises in the region in a manner consistent with Applicable Laws. As of the Effective Date of this Franchise, the Commission shall have

continuing regulatory jurisdiction and supervision over the Cable System and Grantee's operation under the Franchise.

8.3 **Regulation of Rates and Charges.**

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

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

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

## SECTION 9 BOND

9.1 **Performance Bond.**

(a) Upon the Effective Date of this Franchise and at all times thereafter until the Grantee has liquidated all of its obligations under this Franchise, the Grantee shall furnish and file with Commission, on behalf of all Member Cities, a bond in the sum of One Hundred Thousand and No/100 Dollars ($100,000.00) in such form and with such sureties as shall be acceptable to the Commission ("Bond"). The Bond shall be conditioned upon the faithful performance by Grantee of this Franchise and upon the further condition that in the event Grantee shall fail to comply with any law, ordinance or regulation, there shall be recoverable jointly and severally from the principal and surety of the Bond, any damages or losses suffered by City as a result, including the full amount of any compensation, indemnification or cost of removal of any property of Grantee, including a reasonable allowance for attorneys' fees and costs (with interest at prime rate plus two percent(2%)), up to the full amount of the Bond, and which Bond shall further guarantee payment by Grantee of all claims and liens against City, or any public property, and taxes due to City, which arise by reason of the construction, operation, maintenance or use of the Cable System.

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

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

9.4 **Procedure to Draw on Bond**.

(a) The parties shall follow the procedure set forth in Section 11.1 of this Franchise regarding any draw on the Bond.

(b) In the event this Franchise is terminated in accordance with the procedure set forth in Section 11, the City shall be entitled to collect from the Bond that amount which is attributable to any damages sustained by the City as a result of said violation.

(c) Grantee shall be entitled to the return of the Bond, or portion thereof, as remains one hundred and twenty (120) Days after the expiration of the term of the Franchise or termination for violation thereof, provided the City has not notified Grantee of any actual or potential damages incurred as a result of Grantee's operations pursuant to the Franchise or as a result of said violation.

(d) The rights reserved to the City with respect to the Bond are in addition to all other rights of the City whether reserved by this Franchise or authorized by law, and no action, proceeding or exercise of a right with respect to the Bond shall affect any other right the City may have.

## SECTION 10 SECURITY FUND

10.1 **Security Fund**. Within thirty (30) Days of the Effective Date, Grantee shall establish and provide to the City or the Commission, on behalf of the City, as security for the faithful performance by Grantee of all provisions of this Franchise, an irrevocable letter of credit from a financial institution satisfactory to the City or the Commission in the amount of Twenty-Five Thousand and No/100 Dollars ($25,000.00) ("Security Fund"). Failure to post the Security Fund shall constitute a material violation of this Franchise. The Security Fund shall serve as security for the faithful performance by Grantee of all the provisions of this Franchise and compliance with all orders, permits and directions of the City and the payment by Grantee of any claim, liens, costs, expenses and taxes due the City which arise by reason of the construction, operation or maintenance of the Cable System. The obligation to establish the Security Fund required by this paragraph is unconditional. If Grantee fails to establish the Security Fund as required, the City may take whatever action is appropriate to require the establishment of that Security Fund and may recover its costs, reasonable attorneys' fees, and an additional penalty of Five Thousand Dollars ($5,000) in that action.

10.2 **Withdrawal of Funds**. The Security Fund shall permit the City to withdraw funds upon demand (sight draft). 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 other purpose.

10.3 **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, audit, or System review, the liquidated damage shall be Two Hundred Fifty Dollars ($250.00) per Day for each Day, or part thereof, such failure occurs or continues.

(b) For failure to comply with any of the provisions of this Franchise for which a penalty is not otherwise specifically provided pursuant to this Section 10.3, the liquidated damage shall be Two Hundred Fifty Dollars ($250.00) per Day for each Day, or part thereof, such failure occurs or continues.

(c) For failure of Grantee to comply with construction, operation or maintenance standards, the liquidated damage shall be Five Hundred Dollars ($500.00) per Day for each Day, or part thereof, such failure occurs or continues.

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

10.4 **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. However, to the extent City remains a Member City of Commission, liquidated damages under Section 10.3 for a violation of each Member City franchise shall be calculated by the Commission as one violation, and not as multiple violations (one violation for each individual Member City franchise). For example, liquidated damages per Day under section 10.3(a) would equal Two Hundred Fifty Dollars ($250.00), not One Thousand Seven Hundred Fifty Dollars ($1,750) (seven times the per Day liquidated damages amount).

10.5 **Maximum Draw Per Violation**. Any liquidated damages for any given violation shall be imposed upon Grantee for a maximum of Twenty-Five Thousand and No/100 Dollars ($25,000.00). If after that amount of draw from the Security Fund Grantee has not cured or commenced to cure the alleged breach to the satisfaction of the City, the City may pursue all other remedies.

10.6 **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 Fund, the City may then draw from the Security Fund. Payments are not Franchise Fees as defined in Section 16 of this Franchise.

10.7 **Procedure for Draw on Security Fund**. The parties shall follow the procedure set forth in Section 11.1 of this Franchise regarding any withdrawal from the Security Fund.

10.8 **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 Franchise.

10.9 **Failure to Establish Security Fund**. 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 establish a Security Fund under section 10.1 may also, at the option of City, be deemed a violation 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 violation.

10.10 **Replenishment of Security Fund**. If Commission or City exhaust the Security Fund under Section 10.5 during a given violation proceeding, Grantee shall have no obligation to replenish the Security Fund for such violation proceeding. However, Grantee must replenish the Security Fund as security for any future franchise violation. If the amount of the Security Fund established under Section 10.1 is not enough to secure the performance of the obligations described in Section 10.1, then the City or the Commission must resort to the Bond provided in Section 9 or other enforcement mechanisms provided under Section 11.

10.11 **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 10.5.

## SECTION 11 VIOLATION PROCEDURE

11.1 **Basis for Violation**. City or Commission shall give written notice to Grantee if City, in its sole discretion, determines that Grantee has:

(a) Violated any material provision of this Franchise or the acceptance hereto;

(b) Violated any law, ordinance, rule, order, regulation or determination of the City, state or federal government, not in conflict with this Franchise;

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

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

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

11.2 **Violation Procedure**. The written notice shall describe in reasonable detail the alleged violation so as to afford Grantee an opportunity to remedy the violation.

(a) Grantee shall have thirty (30) Days subsequent to receipt of the notice in which to correct the violation (or if such violation 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 violation as soon as possible).

(b) 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 until the Commission or City issues final findings of fact with respect to the violation. However, all penalties shall accrue from the date of the notice of violation until the Commission or City issues final findings of fact with respect to the violation.

(c) The City or Commission shall hear Grantee's dispute at the next regularly scheduled or specially scheduled meeting. Grantee shall have the right to speak and introduce evidence. The City or Commission shall determine whether Grantee has committed a violation and shall make written findings of fact relative to its determination.

(d) If after hearing the dispute, the violation is upheld by the City or Commission, then Grantee shall have thirty (30) Days within which to remedy the violation.

(e) If Grantee fails to cure the violation within thirty (30) Days, such violation shall be a substantial breach and City may elect to terminate the Franchise, or establish and draw on the Bond or Security Fund as provided in Sections 9 or 10.

(f) The City may place the issue of 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:

(i) 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 violation.

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

(iii) 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 terminated and of no further force and effect unless there is compliance within such period as the City may fix, such period may not be less than thirty (30) Days. No opportunity for compliance need be granted for fraud or misrepresentation.

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

11.4 **Compliance with the Laws.**

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

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

## SECTION 12 FORECLOSURE AND RECEIVERSHIP

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

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

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

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

## SECTION 13 REPORTING REQUIREMENTS

13.1 **Quarterly Reports.** Within thirty (30) Days after the end of each calendar quarter, Grantee shall submit to the City along with its Franchise Fee payment, a report showing the basis for computation of the Franchise Fee and PEG Fee payments signed by an authorized representative of Grantee in form and substance substantially equivalent to Exhibit D attached hereto. This report shall separately indicate Grantee's Gross Revenues within the City including, but not limited to such items as listed in the definition of "Gross Revenues" at Section 1.22 of this Franchise. Nothing in the Franchise Fee payment worksheet form set forth in Exhibit D shall be construedto modify the definition of "Gross Revenues" set forth in Section 1.21 of this Franchise.

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

13.3 **Monthly Subscriber Data Report.** Every other month starting in January, Grantee shall provide the City with a Subscriber data report consistent with the format set forth in Exhibit E attached hereto. In the event technical or programming changes require changes to the format of the report, the City and Grantee shall work in good faith to make such changes without the need to amend this Franchise.

13.4 **Other Reports.** Upon request of the City and in no event later than thirty (30) Days from the date of receipt of such request, Grantee shall, without charge, prepare and furnish to the City, at the times and in the form prescribed, such additional reports with respect to its operation, affairs, transactions, or property, as may be reasonably necessary to ensure compliance with the terms of this Franchise. Grantee and City may in good faith agree upon taking into consideration Grantee's need for the continuing confidentiality as prescribed herein. Neither City nor Grantee shall unreasonably demand or withhold information requested pursuant with the terms of this Franchise.

13.5 **Confidential and Trade Secret Information.** Grantee acknowledges that information submitted by Grantee to the City may be subject to the Minnesota Government Data Practices Act ("MGDPA") pursuant to Minn. Stat. Chapter 13. The Commission shall follow all Applicable Laws and procedures for protecting any confidential and trade secret information of Grantee that may be provided to Commission. Grantee acknowledges that the Commission shall at all times comply with the Minnesota Data Practices Act ("MDPA") related to the release of information and nothing herein shall be read to modify the Commission's obligations under the MDPA.

13.6 **Communications with Regulatory Agencies.**

(a) Upon written request (unless service of copies is otherwise mandated by Applicable Law) Grantee shall submit to City copies or online links to 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 and City shall comply with

all Applicable Law governing confidential, privileged or proprietary rights to such documents.

(b) In addition, Grantee and its Affiliates, City and Commission 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 other party a copy of the communication, whether or not specifically requested to do so.

## SECTION 14 CUSTOMER SERVICE POLICIES

14.1 **Response to Customers and Cooperation with City and Commission**. Grantee shall promptly respond to all requests for service, repair, installation and information from Subscribers. Grantee acknowledges the City's interest in the prompt resolution of all cable complaints and shall work in close cooperation with the City to resolve complaints. Grantee shall provide the Commission and the City with the name, address and telephone number of an office that will act as the Grantee's agent to receive complaints, regarding quality of service, equipment malfunctions, billings, and similar matters. Grantee will maintain an "escalated complaint process" to address unresolved complaints from Subscribers. A team of specifically identified employees of Grantee shall be available to the City and the Commission via email and telephone for reporting issues. These specifically identified employees of Grantee will have the ability to take actions to resolve Subscriber complaints relating to billing, property or service restoration, technical appointments, or any other Subscriber matters when necessary. Grantee will follow-up with the City or the Commission in writing by email (and by phone when necessary) with a summary of the results of the complaint(s).

14.2 **Customer Service Agreement and Written Information**. Grantee shall provide to Subscribers access to their service agreement and the following information if not included in the service agreement:

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

(b) Billing procedures.

(c) Service termination procedure.

(d) Change in service notifications.

(e) Converter/Subscriber terminal equipment policy.

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

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

copy of the written information shall be provided to each Subscriber at the time of initial connection and any subsequent reconnection.

14.3 **Customer Service Standards.**

(a) The City hereby adopts the customer service standards set forth in Part 76, §76.309 of the FCC's rules and regulations, as amended.

(b) Grantee shall provide City with information demonstrating Grantee's compliance with each and every term and provision of Section 14.5.

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

14.4 **Local Office.** Grantee shall maintain a convenient local customer service and bill payment location for matters such as receiving Subscriber payments, handling billing questions, equipment replacement and customer service information.

14.5 **Cable System office hours and telephone availability.** Grantee shall comply with the standards and requirements for customer service set forth below during the term of this Franchise.

(a) Grantee will maintain a local, toll-free 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) The access line may be initially answered by an interactive voice response system but a Subscriber, under Normal Operating Conditions, shall have the option to speak to a trained Grantee representative during Normal Business Hours. Inquiries received after Normal Business Hours must be responded to by a trained Grantee representative on the next business day.

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

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

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

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

(f) The Grantee shall utilize such equipment and software and keep such records as are necessary or required to enable the City and Commission to determine whether the Grantee is complying with all telephone answering standards required by applicable customer service regulations and laws, as amended from time to time. The Grantee shall provide the Commission with a quarterly report documenting Grantee's compliance with this Section 14.5 as is the current practice.

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

(a) Standard Installations will be performed within seven (7) business days after an order has been placed. "Standard" Installations are those that are located up to one hundred twenty-five (125) feet from the existing distribution system as more specifically set forth in Section 6.7(b).

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

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

(d) Grantee may not cancel an appointment with a customer after the close ofbusiness 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.

14.7 **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.

14.8 **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.

14.9 **Subscriber Information.**

(a) Grantee will provide Subscribers access to the following information at any time:

(i) Products and Services offered;

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

(iii) Installation and Service maintenance policies;

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

(v) How to find or purchase programming carried on the System;

(vi) Billing and complaint procedures, including the address and telephone number of the Commission's office; and

(vii) A copy of its refund policy for Cable Services.

(b) Subscribers shall be advised of the procedures for resolution of complaints about the quality of the television signal delivered by Grantee, including contact information for the City and the Commission. Subscribers will be notified of any changes in rates or programming 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 14.9.

14.10 **Notice of Rate or Programming Changes**. Grantee shall give thirty (30) Days written notice to both Subscribers and the City before implementing any rate or Service change within the control of Grantee. For the purpose of this section a "Service change" shall not include channel additions or moves that do not impact rates. Such notice shall state the precise amount of any rate change and briefly explain in readily understandable fashion the cause of the rate change. When the change involves the deletion of Channels, each Channel deleted must be separately identified.

14.11 **Subscriber Contracts**. Grantee shall, upon written request, provide the Commission 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. Grantee shall provide City a list of Grantee's current Subscriber rates and charges for Cable Service and a current Channel line-up showing all Channels available in the City. Grantee shall also provide on a monthly basis a copy of a sample Subscriber Bill to the Commission.

14.12 **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.

14.13 **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.

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

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

14.16 **Failure to Resolve Complaints**. Grantee shall resolve a complaint within thirty (30) Days in a manner deemed reasonable by the City under the terms of the Franchise.

14.17 **Notification of Complaint Procedure**. Grantee shall have printed clearly and prominently on each Subscriber bill and in the customer service agreement provided for in Section 14.2, the twenty-four (24) hour Grantee phone number for Subscriber complaints. Additionally, Grantee shall provide information to customers concerning the procedures to follow when they are unsatisfied with measures taken by Grantee to remedy their complaint. This information will include the phone number of the City office or Person designated to handle complaints. Additionally, Grantee shall state that complaints should be made to Grantee prior to contacting the City.

14.18 **Subscriber Privacy**.

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

(i) No signals including signals of a Class IV Channel may be transmitted from a Subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the Subscriber. The request for

permission must be contained in a separate document with a prominent statement that the Subscriber is authorizing the permission in full knowledge of its provisions. Such written permission shall be for a limited period of time not to exceed one (1) year which may be renewed at the option of the Subscriber. No penalty shall be invoked for a Subscriber's failure to provide or renew such permission. The permission shall be revocable at any time by the Subscriber without penalty of any kind whatsoever.

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

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

14.19 **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 occur 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 provided to the Subscriber, Grantee shall promptly refund all deposits or advance charges paid for the service in question by said Subscriber. This provision does not alterGrantee's responsibility to Subscribers under any separate contractual agreement or relieve Grantee of any other liability that may be available under Applicable Law.

(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.

## SECTION 16 COMPENSATION AND FINANCIAL PROVISIONS

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

(a) Franchise Fees shall be paid quarterly not later than forty-five (45) Days following the end of each quarter. Grantee shall include with each quarterly payment a Franchise Fee payment worksheet, in form and substance substantially similar to Exhibit D, signed by an authorized representative of Grantee. No acceptance of any payment shall be construed as an accord that the amount paid is in fact, the correct amount, nor shall such acceptance of payment be construed as a release of any claim which the City may have for further or additional sums payable under the provisions of this section.

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

16.2 **Auditing and Financial Records**. Throughout the term of this Franchise, the Grantee agrees that the City or its designee, upon reasonable prior written notice of twenty (20) Days to the Grantee, may review such of the Grantee's books and records regarding the operation of the Cable System and the provision of Cable Service in the Franchise Area which are reasonably necessary to monitor and enforce Grantee's compliance with the provisions of this Franchise. Grantee shall provide such requested information as soon as possible and in no event more than twenty (20) Days unless Grantee explains that it is not feasible to meet this timeline and provides a written explanation for the delay and an estimated reasonable date for when such information

will be provided. All such documents pertaining to financial matters that may be the subject of an inspection by the City shall be retained by the Grantee for a minimum period of seven (7) years, pursuant to Minn. Stat. § 541.05. The Grantee shall not deny the City access to any of the Grantee's records on the basis that the Grantee's records are under the control of any parent corporation, affiliated entity or a third party. The City may request in writing copies of any such records or books that are reasonably necessary, and the Grantee shall provide such copies within thirty (30) Days of the receipt of such request. One (1) copy of all reports and records required under this or any other section shall be furnished to the City at the sole expense of the Grantee. If the requested books and records are too voluminous, or for security reasons cannot be copied or removed, then the Grantee may request, in writing within ten (10) Days of receipt of such request, that the City inspect them at the Grantee's local offices or at one of Grantee's offices more convenient to City or its duly authorized agent. If any books or records of the Grantee are not kept in such office and not made available in copies to the City upon written request as set forth above, and if the City determines that an examination of such records is necessary for the enforcement of this Franchise, then all reasonable travel expenses incurred in making such examination shall be paid by the Grantee.

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

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

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

16.6 **Indemnification by Grantee**. Grantee shall, at its sole expense, fully indemnify, defend and hold harmless the City and Commission, and in their capacity as such, the officers, agents and employees thereof (collectively the "Indemnified Parties"), from and against any and all claims, suits, actions, demands, liability and judgments for damage or otherwise except those arising wholly from negligence on the part of the Indemnified Parties; for actual or alleged injury to Persons or property, including loss of use of property due to an occurrence, whether or not such property is physically damaged or destroyed, in any way arising out of or through or alleged to arise out of or through the acts or omissions of Grantee or its officers, agents, employees, or contractors or to which Grantee's or its officers, agents, employees or contractors acts or omissions in any way contribute, and whether or not such acts or omissions were authorized or contemplated by this Franchise or Applicable Law; arising out of or alleged to arise out of any claim for damages for Grantee's invasion of the right of privacy, defamation of any Person, firm or corporation, or the violation of infringement of any copyright, trademark, trade name, service mark or patent, or

of any other right of any Person, firm or corporation; arising out of or alleged to arise out of Grantee's failure to comply with the provisions of any Applicable Law. Nothing herein shall be deemed to prevent the Indemnified Parties from participating in the defense of any litigation by their own counsel at such parties' expense. Such participation shall not under any circumstances relieve Grantee from its duty of defense against liability or of paying any judgment entered against the Indemnified Parties.

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

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

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

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

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

(j) Upon the Effective Date, Grantee shall submit to City a certificate documenting the required insurance, as well as any necessary properly executed endorsements. The

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

## SECTION 17 MISCELLANEOUS PROVISIONS

17.1 **Posting and Publication**. 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 ten (10) 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.

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

17.5 **Prior Franchise Terminated**. The cable television franchise originally granted by Ordinance No. 16-04 is hereby terminated. Nothing herein shall serve to waive any rights the parties may have under Ordinance No. 16-04 regarding: 1) the payment of franchise fees and PEG fees; and 2) Grantee's compliance with all applicable City Code obligations governing Grantee's facilities in Streets.

17.6 **Franchise Acceptance**. No later than thirty (30) Days following City Council approval of this Franchise, Grantee shall execute and return to the City three (3) original franchise agreements. The executed agreements shall be returned to the City accompanied by performance bonds, security funds, and evidence of insurance, all as provided in this Franchise. In the event Grantee fails to provide the required executed Franchise, insurance certificate as required by Section 16(j) and the Bond, this Franchise shall be null and void. The Grantee agrees that despite the fact that its written acceptance may occur after the Effective Date, the obligations of this Franchise shall become effective on the Effective Date.

17.7 **Amendment of Franchise**. Grantee and City may agree, from time to time, to amend this Franchise. Such written amendments may be made to address technology changes or advances subsequent to a review session pursuant to Section 2.6 or at any other time if City and Grantee agree that such an amendment will be in the public interest or if such an amendment is required due to changes in federal, state or local laws; provided, however, nothing herein shall restrict City's exercise of its police powers.

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

| | |
|---|---|
| If to City: | City Manager<br>City of West St. Paul<br>1616 Humboldt Avenue<br>West St. Paul, MN 55118 |
| If to Commission: | Executive Director<br>Northern Dakota County Cable Communications Commission<br>5845 Blaine Avenue<br>Inver Grove Heights, MN 55076 |
| If to Grantee: | General Manager<br>Comcast<br>10 River Park Plaza<br>St. Paul, MN 55107 |

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

Recognizing the widespread usage and acceptance of electronic forms of communication, emails will be acceptable as formal notification related to the conduct of general business amongst the parties to this contract, including but not limited to programming and price adjustment communications required under section 14.12. Such communication should be addressed and directed to the Person of record as specified above.

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

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

performing work on Grantee's behalf are familiar with the requirements of this Franchise, the City Code and other Applicable Laws governing the work performed by them.

17.11 **Governing Law**. This Franchise is made pursuant to Minnesota Statutes Chapter 238 and the City Code and is intended to comply with all requirements set forth therein. This Franchise shall be deemed to be executed in the State of Minnesota, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of Minnesota, as applicable to contracts entered into and performed entirely within the State.

17.12 **Commission.** In the event the City lawfully withdraws from the Commission, any reference to the Commission in this Franchise shall thereafter be deemed a reference to the City and the rights and obligations related thereto shall, where possible, accrue to the City unless or until a new franchise is executed between Grantee and City. Nothing herein shall in any way modify or alter any rights or obligations the City or Commission may have under the Amended Joint and Cooperative Agreement between the parties.

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 **No Waiver**. All rights and remedies given to the City by this Franchise or retained by the City herein shall be in addition to and cumulative with any and all other rights and remedies, existing or implied, now or hereafter available to the City, at law or in equity, and such rights and remedies shall not be exclusive, but each and every right and remedy specifically given by this Franchise or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by the City and the exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy.

17.17 **Grantee Acknowledgment of Validity of Franchise.** Grantee acknowledges that it has had an opportunity to review the terms and conditions of this Franchise and that under current law Grantee believes that said terms and conditions are not unreasonable or arbitrary, and that Grantee believes the City has the power to make the terms and conditions contained in this Franchise.

17.18 **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.

**17.19 Competitive Equity.**

(a) The City reserves the right to grant additional franchises or similar authorizations to provide Video Programming services via Cable Systems or other Wireline MVPDs. The City intends to treat Wireline MVPDs in a nondiscriminatory manner to the extent permissible under Applicable Law. If, following the Effective Date of this Franchise, the City grants such an additional franchise or authorization to a Wireline MVPD and Grantee believes the City has done so on terms materially more favorable than the obligations under this Franchise, then the provisions of this Section 17.21 will apply.

(b) As part of this Franchise, the City and Grantee have mutually agreed upon the following terms as a condition of granting the Franchise, which terms may place the Grantee at a significant competitive disadvantage if not required of a Wireline MVPD: the obligation to pay to the City a Franchise Fee, Gross Revenues as provided for and defined in this Franchise, and the obligation to comply with the requirements in this Franchise regarding PEG funding, PEG Channels, records and reports, security instruments, audits, dispute resolution, remedies, notice and opportunity to cure, and customer service obligations (hereinafter "Material Obligations"). The City and Grantee further agree that this provision shall not require a word for word identical franchise or authorization for competitive equity so long as the regulatory and financial burdens on each entity are materially equivalent.

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

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

(e) Nothing in this Section 17.21 is intended to alter the rights or obligations of either party under applicable federal or state law, and it shall only apply to the extent permitted under Applicable Law and FCC orders. In no event will the City be required to refund or to offset against future amounts due the value of benefits already received.

(f) To the extent the City has legal authority to grant a franchise or similar authorization to a wireless provider of Cable Service, the competitive equity rights provided by this section shall apply with respect to Material Obligations imposed in such franchise or other similar agreement. In the event of a dispute regarding the City's legal authority, Grantee shall have the burden to demonstrate that such authority exists.

**17.20 Treatment of negotiated provisions.**

In consideration of the City and the Commission relinquishing any claim, title or right to certain obligations set forth in the cable television franchise originally granted by Ordinance No. 16-04, Grantee agrees that for the term of this Franchise any costs incurred by Grantee pursuant to Sections 7.2(g), 7.5(c), 7.8, 7.9, 7.10, 7.12, 7.14, 7.15, 7.16, 13.1, 13.2, 13.3, and 13.4 shall be treated by Grantee as Grantee's business expense and not a Franchise Fee under Sections 1.19 and 16.1 of this Franchise or as a PEG Fee under Section 7.13 of this Franchise. Grantee reserves any rights it may have to recover from Subscribers, as a separate line item from the PEG Fee in Section 7.13 of this Franchise, any PEG capital costs set forth in Section 7.2(g), 7.8, 7.9, 7.10, 7.11, 7,15 and 7.16 as may be permitted by Applicable Law as of the Effective Date.

Passed by the City Council of the City of West St. Paul, Minnesota this 14th day of September 2020.

ATTEST:

David J. Napier, Mayor

Shirley R Buecksler, City Clerk

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

COMCAST OF ST. PAUL, INC.

Date:_____ By:_____

Its: _____

SWORN TO BEFORE ME this
____day of_____, 2020.

_____
NOTARY PUBLIC

**Exhibit A**
**SD/HD PEG Channel Numbers**

| | Channel Name | SD Channel # | HD Channel # |
|---|---|---|---|
| 1. | Community | 14 | |
| 2. | Public Access | 15 | |
| 3. | Multifaith Access | 16 | |
| 4. | Government | 18 | 799 |
| 5. | Government | 19 | 859 |
| 6. | Education | 20 | |
| 7. | Community Bulletin Board | 21 | |

**Exhibit B**

**Delivery of live and recorded programming to and from below listed entities on C-RAN**

1. MCN 6 (1 receive ch and 1 send ch)
2. St. Paul (2 receive ch and 1 send ch)
3. Eagan (3 receive ch and 1 send ch)
4. Burnsville (1 receive ch)
5. Bloomington (1 receive ch)
6. CCX (1 receive ch)

## Exhibit C
## PEG Monitoring

| | NAME | ADDRESS |
|---|---|---|
| 1. | Inver Grove Heights City Hall | 8150 Barbara Avenue, Inver Grove Heights, MN 55077 |
| 2. | Mendota Heights City Hall | 1101 Victoria Curve, Mendota Heights, MN 55118 |
| 3. | NDC4 Commission and Town Square TV | 5845 Blaine Avenue, Inver Grove Heights, MN 55076 |
| 4. | South St. Paul City Hall | 125 3rd Avenue, South St. Paul, MN 55075 |
| 5. | West St. Paul City Hall | 1616 Humboldt Avenue, West St. Paul, MN 55118 |

## PEG Transport

| | NAME | ADDRESS |
|---|---|---|
| 1. | Inver Grove Heights City Hall | 8150 Barbara Avenue, Inver Grove Heights, MN 55077 |
| 2. | Mendota Heights City Hall | 1101 Victoria Curve, Mendota Heights, MN 55118 |
| 3. | NDC4 Commission and Town Square TV | 5845 Blaine Avenue, Inver Grove Heights, MN 55076 |
| 4. | South St. Paul City Hall | 125 3rd Avenue, South St. Paul, MN 55075 |
| 5. | West St. Paul City Hall | 1616 Humboldt Avenue, West St. Paul, MN 55118 |

**Exhibit D**

**Franchise Fee Payment Worksheet**

*TRADE SECRET – CONFIDENTIAL*

*****CONFIDENTIAL*****

COMCAST

| | |
|---|---|
| System Name: | Comcast of Minnesota, Inc. |
| Email: | Prasant_Nadella@cable.comcast.com |
| Phone: | 610-665-2579 |

| | |
|---|---|
| Vendor ID: | XXXXX |
| Contract Name: | X |
| Statement Period: | Jan - Mar, 2020 |
| Payment Amount: | $X |
| Statement Number: | XXXXXX |
| CUID: | XXXXXX |
| System ID: | XXXX-XXXX-XXXX |

This statement represents your payment for the period listed above.

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

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

# Exhibit E
# MONTHLY SUBSCRIBER DATA REPORT

**Twin Cities NDC**

Data is for fiscal month ending x/x/xxxx

| | |
|---|---|
| **House Data** | |
| Marketable Homes | xxx |
| Penetration % | x% |
| **Subscriber Data** | |
| Basic 1 (residential, includes EBUs) | xxx |
| Basic 2 (residential, includes EBUs) | xxx |
| **Other Video Services** | |
| Digital Economy (Residential) | xxx |
| Digital Preferred | xxx |
| Multilatino | xxx |
| Sports Tier | xxx |
| HBO | xxx |
| Cinemax | xxx |
| Showtime | xxx |
| Starz | xxx |
| TMC | xxx |
| **Equipment** | |
| Households with DVR Equipment | xxx |
| Households with HD Equipment | xxx |
| Households with DTA Equipment | xxx |
| **Pay Per View** | |
| Total # PPV Purchases | xxx |
| **Connects** | |
| Basic 1 Connects (Residential) | xxx |
| Basic 1 Disconnects (residential) | xxx |
| Net Gain/Losss | xxx |

*EBUs - Equivalent Business Units

CONFIDENTIAL