

ORDINANCE NO. 16, 4th Series

CABLE SERVICES REGULATORY ORDINANCE

FOR

THE CITY OF EAST GRAND FORKS, MINNESOTA

TABLE OF CONTENTS

	<u>PAGE</u>
SECTION 1: <u>GENERAL PROVISIONS</u>	2
1.1 Title	2
1.2 Applicability	2
1.3 Preservation of Police Power Authority	2
1.4 Public Inspection of Records	2
1.5 No Cause of Action for Damages Against the City	3
1.6 Enforcement	3
1.7 Relationship of the Parties	3
SECTION 2: <u>DEFINITIONS</u>	3
2.1 Access Channels	3
2.2 Affiliate	3
2.3 Basic Cable Service	4
2.4 Cable Act	4
2.5 Cable Service	4
2.6 Cable Television System, Cable System, or System	4
2.7 Capital Costs	4
2.8 City or Grantor	4
2.9 Channel or Cable Channel	4
2.10 Complaint	4
2.11 Converter	5
2.12 Drop	5
2.13 Facilities	5
2.14 FCC	5
2.15 Franchise	5
2.16 Franchise Agreement	5
2.17 Franchise Area	5
2.18 Franchise Fee	5

2.19	<i>Franchisee</i>	5
2.20	<i>Gross Revenue</i>	5
2.21	<i>Installation</i>	6
2.22	<i>Normal Business Hours</i>	6
2.23	<i>Normal Operating Conditions</i>	6
2.24	<i>Open Video Services or OVS</i>	6
2.25	<i>Pay TV</i>	6
2.26	<i>Person</i>	6
2.27	<i>Public Building</i>	6
2.28	<i>Renewal</i>	6
2.29	<i>Rights-of-Way</i>	6
2.30	<i>Service Interruption</i>	7
2.31	<i>Standard Installation</i>	7
2.32	<i>Subscriber</i>	7
SECTION 3:	<u>FRANCHISE REQUIREMENTS</u>	
3.1	<i>Franchise Required</i>	7
3.2	<i>Nature of Rights Granted by Franchise</i>	7
3.3	<i>Franchise Not Exclusive</i>	7
3.4	<i>Franchise Territory</i>	8
3.5	<i>Selection of Initial Franchise</i>	8
	3.5.1 <i>Installation Plan</i>	8
	3.5.2 <i>Rate Schedule</i>	8
	3.5.3 <i>Financial Soundness and Capability</i>	8
	3.5.4 <i>Experience in Operating a Cable or OVS System</i>	8
	3.5.5 <i>Technical Capability</i>	8
	3.5.6 <i>Future Needs</i>	8
	3.5.7 <i>Additional Considerations</i>	9
3.6	<i>Application for Franchise Renewal</i>	9
SECTION 4:	<u>TERMS</u>	9
4.1	<i>Term of Franchise</i>	9

SECTION 5: REQUIRED PROVISIONS..... 9

- 5.1 Franchise Provisions 9**
- 5.2 Franchise Agreement..... 10**
- 5.3 Design, Services, and Capabilities..... 11**
 - 5.3.1 Cable System Design..... 11**
 - 5.3.2 The Cable System..... 11**
 - 5.3.3 Drops to Public Buildings..... 11**
 - 5.3.4 School and Library Cable Modems 12**
 - 5.3.5 Use of Franchise Facilities..... 12**
 - 5.3.6 Upgrade of the System and New Development 12**
 - 5.3.7 Emergency Alert Capability..... 13**
 - 5.3.8 Periodic Review and Evaluation..... 13**
 - 5.3.9 Close Captioning and Descriptive Audio Service 13**
 - 5.3.10 Standby Power..... 13**
 - 5.3.11 HDTV/ATV Conversion..... 13**
- 5.4 Public, Educational, and Governmental Access or Peg Access 13**
 - 5.4.1 Access Channels..... 13**
 - 5.4.2 Proof of Performance Testing 14**
- 5.5 Construction Standards and Requirements 14**
 - 5.5.1 Permit Required..... 14**
 - 5.5.2 Construction Standards..... 14**
 - 5.5.3 Compliance with City Ordinances for Work in Rights-of-Way 14**
 - 5.5.4 Compliance with City Ordinances for Construction & Building 14**
 - 5.5.5 Removal and Relocation of Facilities..... 15**
 - 5.5.6 Movement of Lines 15**
 - 5.5.7 Tree Trimming..... 15**
 - 5.5.8 Responsible for Restoration and Costs 15**
 - 5.5.9 Failure to Complete Work..... 15**
- 5.6 Technical Standards..... 16**
 - 5.6.1 Compliance with OSHA 16**
 - 5.6.2 Compliance with National Electrical Codes..... 16**
 - 5.6.3 Compliance with FAA Regulations 16**
 - 5.6.4 Test and Compliance Procedure 16**
 - 5.6.5 Additional Tests 16**
- 5.7 Repair 16**
- 5.8 Removal of Facilities From Subscriber's Premises Upon Request 16**
- 5.9 Transfer of Ownership 17**
- 5.10 Purchase by City..... 18**
- 5.11 Requests for Cable Services 18**

5.12	<i>Multiple Franchise</i>	18
	5.12.1 <i>Grant of Additional Franchise</i>	18
	5.12.2 <i>Permits for Non-Franchised Entities</i>	19
5.13	<i>Discriminatory or Preferential Practice</i>	19
	5.13.1 <i>Rates and Charges</i>	19
	5.13.2 <i>Access and Employment</i>	19
	5.13.3 <i>Build-Out</i>	20
5.14	<i>Subscriber Privacy</i>	20
5.15	<i>Permits and Authorizations</i>	20
5.16	<i>Annual Reports</i>	20
	5.16.1 <i>Contents</i>	20
	5.16.2 <i>Service Contract and Subscriber Information</i>	21
5.17	<i>Indemnification, Security Funds, Insurance</i>	22
	5.17.1 <i>Liability and Indemnification</i>	22
	5.17.2 <i>Security Funds</i>	22
	5.17.3 <i>General Provisions Relating to Insurance</i>	23
	5.17.4 <i>Liability Insurance</i>	23
	5.17.5 <i>Non-Waiver</i>	25
5.18	<i>Continuity of Service</i>	25
5.19	<i>Safety Requirements</i>	25
SECTION 6: <u>FRANCHISE FEES</u>		26
6.1	<i>Five Percent Franchise Fee</i>	26
6.2	<i>Payment and Audits</i>	26
6.3	<i>Acceptance of Payment</i>	26
6.4	<i>Failure to Pay</i>	26
6.5	<i>Penalty for Late Payment</i>	27
6.6	<i>Monthly Report of Gross Revenues</i>	27
SECTION 7: <u>CUSTOMER SERVICE STANDARDS</u>		27
SECTION 8: <u>GENERAL</u>		30
8.1	<i>Subscriber Rates</i>	30
8.2	<i>Records Required and City's Right to Inspect</i>	30
8.3	<i>Abandonment or Removal of Franchise Property</i>	31

8.3.1	<i>Abandonment</i>	31
8.3.2	<i>Removal</i>	31
8.3.3	<i>Transfer of Abandoned Property</i>	31
8.3.4	<i>Above Ground Portion of System</i>	31
8.3.5	<i>No Material Interference</i>	32
8.4	<i>Right Reserved to City</i>	32
8.5	<i>Force Majeure</i>	32
8.6	<i>Non-Enforcement Not Estoppel</i>	32
8.7	<i>Procedure for Remediating Franchise Violation</i>	32
8.8	<i>Penalty</i> 33	
8.9	<i>Revocation or Termination of Franchise</i>	34
SECTION 9: <u>SEVERABILITY</u>		35
SECTION 10: <u>FORECLOSURE</u>		36
SECTION 11: <u>ADMINISTRATION OF FRANCHISE</u>		36
SECTION 12: <u>EFFECTIVE DATE, PUBLICATION, ACCEPTANCE & GOVERNING LAW</u>		36
12.1	<i>Publication: Effective Date</i>	36
12.2	<i>Acceptance and Governing Law</i>	36
EXHIBIT A: FRANCHISE FEE WORKSHEET		38
EXHIBIT B: PUBLIC & SCHOOL BUILDINGS		38

AN ORDINANCE FOR THE CITY OF EAST GRAND FORKS, MINNESOTA ESTABLISHING REQUIREMENTS AND PROCEDURES RELATING TO THE GRANTING OF CABLE SERVICES FRANCHISES FOR USE OF PUBLIC RIGHTS-OF-WAY WITHIN THE CITY OF EAST GRAND FORKS, INCLUDING THE DEFINITION OF TERMS, REQUIREMENTS FOR COMMUNITY SERVICE CHANNELS, REQUIREMENTS REGARDING THE CHARGING OF FEES FOR USE OF RIGHTS-OF-WAY, CUSTOMER SERVICE STANDARDS, TECHNICAL STANDARDS, AND OTHER PROVISIONS RELATING TO CABLE SERVICES FRANCHISES.

WHEREAS, Minnesota law requires a provider of cable service to operate pursuant to franchise granted by a municipality; and

WHEREAS, the City of East Grand Forks, pursuant to applicable federal and state law, is authorized to grant one or more nonexclusive Franchises to construct, operate, maintain, and reconstruct Cable Television Systems within the City limits. Unless otherwise permitted by applicable law, this Franchise will not extend to services beyond Cable Service, as defined herein, such as telephone service or other telecommunications services. A Franchisee does not waive its rights to offer telephone service or other telecommunications services subject to applicable local, state, or federal law; and

WHEREAS, the City finds that the development of Cable Television Systems has the potential of having great benefit and impact upon the Residents and businesses of the City. Because of the complex and rapidly changing technology associated with cable television, the City further finds that the public convenience, safety, and general welfare can best be served by establishing regulatory powers regarding Cable Service that are vested in the City or such Persons the City designates. It is the intent of this Ordinance and subsequent amendments to provide for and specify the means to obtain the best possible Cable Service for the public, and any Franchises issued pursuant to this Ordinance will be deemed to include this finding as an integral part thereof; and

WHEREAS, the City will not discriminate in awarding Franchises pursuant to this Ordinance. Entities which request a Franchise shall comply with the terms of this Ordinance; and

WHEREAS, in order to ensure that the City and its residents receive state of the art Cable Services and capabilities as this technology further evolves, all Cable Franchises to the extent set forth herein shall be subject to this Ordinance and should, be subject to periodic review and modifications to keep current with changing law, technology, and Services.

East Grand Forks, Minnesota Municipal Code Chapter _____ is hereby added to read as follows:

SECTION 1: GENERAL PROVISIONS

1.1 Title.

This Ordinance shall be referred to and cited as the “Cable Services Code” or herein as the “Ordinance” of the City of East Grand Forks, Minnesota.

1.2 Applicability.

The requirements of this Ordinance shall apply to the full extent of the terms herein and shall be limited in scope or application only to the extent as may be required by applicable federal or state law, including such changes in applicable law as may be hereinafter enacted. No provisions of this Ordinance shall be disregarded pursuant to this subsection except on express application to and determination by the City to such effect based on the specific factual circumstances demonstrated. The provisions of this Ordinance shall be deemed incorporated in each Cable Franchise granted. Nothing in this Ordinance or amendments thereto shall be interpreted to unilaterally deprive any Person of any rights or obligations imposed by any binding and existing valid Cable Franchise or contract during the term thereof, whether entered into before or after enactment of this Ordinance, and shall impose obligations on any such Person additional to those included in such Franchise or contract only to the extent permitted by law and to the extent not inconsistent with such Franchise or contract; provided that the failure of the City to enforce any provision herein or the failure of any Person to comply with any provision herein shall not be a waiver of the City’s right to enforce such provisions nor shall it in any way constitute evidence or agreement by the City that such Person has a valid existing Cable Franchise. The provisions of this Ordinance shall apply irrespective of whether a Franchisee is determined to be operating pursuant to a valid Cable Franchise.

1.3 Preservation of Police Power Authority

To the extent not inconsistent with Section 5.1.2, any rights granted pursuant to this Ordinance and pursuant to any Franchise authorized hereunder are subject to the authority of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public. Franchisees shall be subject to and comply with all applicable Laws enacted by the City, to the extent not in conflict with Minnesota or federal law. Nothing in this Ordinance shall be deemed to waive a right, if any, that any party may have to seek judicial or regulatory review as to any provisions of the Ordinance or as to actions of the parties under applicable federal law, including 47 U.S.C. 555A, as well as applicable state or local law currently in effect or as may hereinafter be amended.

1.4 Public Inspection of Records.

Certain information required to be filed with the City pursuant to this Ordinance is subject to inspection and copying by the public pursuant to the provisions of Minnesota law applicable to public and non-public information. The City shall provide a Franchisee with notice of any request by a third party for information designated as proprietary. Nothing in this Ordinance or Franchise shall be construed as a waiver of the provisions of Minnesota law applicable to public and non-public information.

1.5 No Cause of Action for Damages Against the City.

The Franchisee shall have no cause of action whatsoever against the City for damages of any kind arising from any of the provisions or requirements of a Franchise, or because of the enforcement thereof by said City, or for the failure of said City to have the authority to grant, all, or any part, of the Franchise therein granted; provided that said Franchisee expressly acknowledges that it accepted the rights therein granted in reliance upon its independent and personal investigation and understanding of the power of authority of said City to enter into the Franchise authorized therein with Franchisee; provided further that the Franchisee acknowledges by its acceptance of said Franchise that it has not been induced to enter into a Franchise upon any understanding, or promise, whether given verbally or in writing by or on behalf of said City, or by any other person concerning any term or condition of a Franchise not expressed therein; provided further that the Franchisee acknowledges by the acceptance of any Franchise that it has carefully read the provisions, terms, and conditions hereof and of its Franchise and is willing to, and does accept, all of the risk attendant to said provisions, terms, and conditions. This section shall be interpreted to provide the same limitation of liability as that contained in 47 USC 555(a), as amended.

1.5 Enforcement.

The City shall be entitled to enforce this Ordinance and any Franchise through all remedies lawfully available.

1.6 Relationship of the Parties.

Under no circumstances shall any Franchise authorized by this Ordinance be construed to create any relationship of agency, partnership, joint venture, or employment between the parties.

SECTION 2: DEFINITIONS

For the purposes of this Ordinance, the following terms, phrases, words, and their derivations will have the meaning given herein. Words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number, and all words in the plural number include the singular. All capitalized terms used in the definition of any other term will have their meaning as otherwise defined in this Section 2. The words "will" and "shall" are mandatory and "may" is permissive. Words not defined will be given their common and ordinary meaning.

2.1 Access Channels means Channel capacity designated for public, educational or governmental access use, as well as the facilities and equipment required for the use of such Channel capacity.

2.2 Affiliate means each person, directly or indirectly, controlling, controlled by, or under common control with the Franchisee; provided that Affiliate shall in no event mean any limited partner or shareholder holding an interest of less than fifteen percent (15%) of

such Franchisee, or any creditor of such Franchisee solely by virtue of its status as a creditor and which is not otherwise an Affiliate by reason of owning a controlling interest in, being owned by, or being under common ownership, common management, or common control with, such Franchisee.

- 2.3 Basic Cable Service means any service tier, which includes the lawful retransmission of local television broadcast signals and Access Channels required by this Ordinance to be carried on the basic tier. This definition will be consistent with and deemed to change pursuant to any changes in applicable federal law or FCC rules.
- 2.4 Cable Act means the Cable Communications Policy Act of 1984, Pub. L. No. 98-549, 98 Stat. 2779 (1984) (codified at 47 U.S.C. §§ 521-611 (1982 & Supp. V. 1987)) as amended by the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, and the Telecommunications Act of 1996, Pub. L. No. 104-104, as may, from time to time, be amended.
- 2.5 Cable Service means (a) the one-way transmission to Subscribers of (i) Video Programming or (ii) Other Programming Service; (b) Subscriber interaction, if any, which is required for the selection or use of such Video Programming or other programming service.
- 2.6 Cable Television System, 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 the Franchise Area. Such term does not include (a) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (b) a facility that serves Subscribers without using any public right-of-way; (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 will 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 on-demand services; or (d) any facilities of any electric utility used solely for operating its electric utility system.
- 2.7 Capital Costs means costs associated with the purchase of assets, products or other resources that will provide service for more than one year, but shall not have any meaning inconsistent with generally accepted accounting principles.
- 2.8 City or Grantor means the City of East Grand Forks, Minnesota, and all territory within its existing and future territorial corporate limits, or jurisdiction for purposes of this Ordinance.
- 2.9 Channel or Cable Channel means a portion of the electromagnetic frequency spectrum which is used in a Cable or OVS System and which is capable of delivering a television Channel as defined by the FCC.

- 2.10 Complaint means any verbal or written or electronic allegation, or assertion made by a Person regarding Cable Service and which is subject to City regulation, requiring subsequent corrective action to the System or any portion thereof.
- 2.11 Converter means an electronic device that converts signals to a frequency not susceptible to interference within the television receiver of a Subscriber and, through the use of an appropriate Channel selector, permits a Cable Subscriber to view all authorized Cable Subscriber signals delivered at designated converter dial locations.
- 2.12 Drop means the cable or cables that connect the ground block on the Cable Subscriber's property to the nearest feasible point on the Cable or OVS System in order to receive Cable Service.
- 2.13 Facilities means any portion of a Cable or OVS System located in, along, over, upon, under, or through the Rights-of-Way.
- 2.14 FCC means the Federal Communications Commission, its designee, or any successor thereof.
- 2.15 Franchise means an initial authorization or renewal thereof issued by the City, whether such authorization is designated as a Franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of the Cable or OVS System or the provision of OVS Service.
- 2.16 Franchise Agreement means the separate agreement or granting Ordinance by which the Franchise is granted to the Franchisee, as required by this Ordinance.
- 2.17 Franchise Area means the entire geographic area within the City as it is now constituted or may in the future be constituted.
- 2.18 Franchise Fee means any tax, fee, or assessment of any kind imposed by the City or other governmental entity on a Franchisee or its Cable Subscribers, or both, solely because of their status as such, pursuant to this Ordinance. The term "Franchise Fee" does not include: (i) any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and Cable Operators or their Cable Services but not including a tax, fee, or assessment that is unduly discriminatory against Franchisees or Cable Subscribers); (ii) Capital Costs that are required by a Franchise to be incurred by a Franchisee for public, educational or governmental ("PEG") Access facilities; (iii) requirements or charges incidental to the award or enforcement of a Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or (iv) any fee imposed under Title 17 of the United States Code.
- 2.19 Franchisee means and includes all Persons having any rights, powers, privileges, duties, liabilities, or obligations under this Ordinance and the Franchise Agreement and any lawful agent, employee, successor, transferee, or assignee of the original Franchisee.

- 2.20 Gross Revenues means all revenues received by the Franchisee from Cable Services in the City and consistent with local, state, and federal law, including, but not limited to, Subscriber revenues (including Pay TV), home shopping programs, rentals of equipment, advertising revenue and any and all other revenues received by the Franchisee from the provision of Cable Service in the City. Gross Revenues do not include revenues recorded as received but which are "bad debt," but includes any recoveries of bad debt. Gross Revenues also do not include any sales, excise, or other taxes collected by Franchisee on behalf of federal, state, county, city, or other governmental unit. Subject to a determination by applicable law, internet modem and related services may be a Cable Service and revenues derived from such service part of Gross Revenue.
- 2.21 Installation means the act of connecting the System from the feeder cable to the Subscriber terminal so that Cable Service may be received by the Subscriber.
- 2.22 Normal Business Hours means those hours during which most similar businesses in the community are open to serve customers. In all cases, Normal Business Hours will include some evening hours at least one night per week and/or some weekend hours.
- 2.23 Normal Operating Conditions means those service conditions which are within the control of the Franchisee. Those conditions which are not within the control of the Franchisee 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 the Franchisee 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 System.
- 2.24 Open Video Services or OVS means any video programming Services provided to any person by a Franchisee certified by the FCC to operate an Open Video System pursuant to Section 47 U.S.C. 573, as may be amended, regardless of the Facilities used.
- 2.25 Pay TV means the delivery over the System of per-Channel or per-program programming to Subscribers for a separate fee or charge from Basic Cable Service.
- 2.26 Person means any natural person or any association, firm, individual, partnership, joint stock company, joint venture, corporation, or other legally recognized entity, public or private, whether for profit or not for profit.
- 2.27 Public Building means any building identified in the Franchise, which is owned or for the greater part occupied by the City or on behalf of the City by other governmental units performing traditional municipal governmental functions.
- 2.28 Renewal means a new Cable Franchise granted to an existing Franchisee.
- 2.29 Rights-of-Way means the surface and space on, above and below every municipal street, alley, road, highway, lane or City right-of-way dedicated or commonly used now or hereafter for utility purposes and facilities thereon, including, but not limited to, overhead lighting facilities. This term shall not include any county, state, or federal rights-of-way except where controlled or maintained by the City, or as other provided by applicable Laws or pursuant to an agreement between the City and any such Person or Agency.

"Rights-of-Way" shall not include public property owned or leased by the City and not intended for right-of-way use, including, but not limited to, municipal office building property or public works facilities.

- 2.30 Service Interruption means the loss of picture or sound on one or more Cable Channels for single or multiple Subscribers.
- 2.31 Standard Installation means any Service installation that can be completed using a Drop of one hundred twenty-five (125) feet or less.
- 2.32 Subscriber means any Person who lawfully receives Cable Service provided by a Franchisee.

SECTION 3: FRANCHISE REQUIREMENTS

3.1 Franchise Required.

It shall be unlawful for any Person to construct, operate, or maintain a Cable or OVS System or to provide Cable Service or other competing multichannel video services, including OVS, in the City without a Franchise in the form of a Franchise Agreement authorizing the same, unless applicable federal or State law prohibits the City's enforcement of such a requirement. Such Franchise Agreement shall comply with all of the specifications of this Ordinance.

3.2 Nature of Rights Granted by Franchise.

Cable Franchises shall not convey title, equitable or legal, in the Rights-of-Way, and shall give only the right to occupy Rights-of-Way, for the purposes of providing Cable Services and as may be further limited by the Franchise. No Franchise shall grant the right to use Facilities owned or controlled by the City or a third-party, without the consent of such party, nor shall a Franchise excuse Franchisee from obtaining appropriate access or attachment agreements before locating its Facilities on the Facilities owned or controlled by the City or a third-party. All Franchises shall be deemed to incorporate and be limited by the provisions of this Ordinance and shall create rights for the sole and exclusive use of Franchisee. Any Franchise or other authorization for Cable Services, in whatever form granted, shall not grant or include: (i) any other permit or authorization required for the privilege of transacting and carrying on a business within the City required by the ordinances and laws of the City, including the provision of communications services; (ii) any permit, agreement, or authorization required in connection with operations in the Rights-of-Way including, without limitation, permits and agreements for placing devices on or in poles, conduits, or other structures, whether owned by the City or a private entity, or for excavating or performing other work in or along the Rights-of-Way.

3.3 Franchise Not Exclusive.

Any Cable Franchise granted by the City shall be nonexclusive. The Grantor specifically reserves the right to grant, at any time, such additional Franchises for a Cable or OVS

System or any component thereof, to any other Person including itself, as it deems appropriate, subject to this Ordinance and applicable State and federal law.

3.4 Franchise Territory.

Every Cable Franchise shall apply to the entire territorial area of the City, as it exists now or may later be configured.

3.5 Selection of Franchisee.

In selecting a Franchisee pursuant to this Ordinance, the City will prepare a request for proposals to seek bids for a Cable or OVS System to be established under a Franchise by the City. This request for proposals will contain information and instructions relating to the preparation and filing of proposals; conditions regarding the Installation, operation, and maintenance of a Cable or OVS System; and the criteria to be used in evaluating applicant proposals. Any Person desiring an initial Franchise for a Cable or OVS System shall file an application with the City. A nonrefundable Application Fee as may be hereinafter be established by the City shall accompany the application, which shall not be considered or credited against the collection of applicable Franchise Fees. The provisions of this Section will not be applicable to the renewal of any Franchise.

Applicants may be evaluated according to the following criteria:

3.5.1 Installation Plan. Consideration may be given to an Installation plan that would provide the flexibility needed to adjust to new developments, maintenance practices, and services that would be available to the Subscriber and the community immediately and in the future.

3.5.2 Rate Schedule. Consideration may be given to applicants with the most reasonable Installation and Subscriber rate schedule.

3.5.3 Financial Soundness and Capability. The evidence of financial ability required in the applicant's proposal will be such as to assure the ability to complete the entire System within a maximum of three years from the date the Franchise is granted. The City will also consider the applicant's ability to operate the System and provide the necessary services.

3.5.4 Demonstrated Experience in Operating a Cable or OVS System. Consideration may be given to evidence of the applicant's experience in operating a Cable or OVS System, where such evidence would show or tend to show or confirm the ability of the applicant to furnish sufficient and dependable service to the potential public and private users.

3.5.5 Technical Capability. The City may consider the quality of service offered, including signal quality, response to Subscriber complaints, and billing practices.

3.5.6 Future Needs. Consideration may be given to the Franchisee's ability to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.

3.5.7 Additional Considerations. The City may consider any additional information that it deems applicable.

3.6 Application for Franchise Renewal.

Franchise renewals will be according to applicable law including, but not necessarily limited to, the Cable Act, as amended. The City and Franchisee, by mutual consent, may enter into renewal negotiations at any time during the term of the Franchise Agreement.

SECTION 4: TERM

4.1 Term of Franchise.

The term of the Franchise will be stated in the Franchise Agreement.

SECTION 5: REQUIRED PROVISIONS

5.1 Franchise Provisions.

5.1.1 All Franchises granted pursuant to this Ordinance will be subject to the following provisions:

5.1.1(1) The continuing authority of City to impose such other regulations of general applicability through lawful exercises of its police powers as may be determined by the City Council to be conducive to the health, safety, and welfare of the public.

5.1.1(2) The continuing authority of City to control and regulate the use of its streets.

5.1.1(3) The authority of City to inspect all construction or installation work performed subject to the provisions of the Franchise and this Ordinance, and make such inspections as it will find necessary to insure compliance with the terms of the Franchise, this Ordinance, and other pertinent provisions of law.

5.1.1(4) The authority of City to inspect the books, records, maps, plans, income tax returns, and other like materials of the Franchisee upon reasonable notice to insure compliance with the terms of the Franchise, this Ordinance, and other pertinent provisions of law, including Franchisee's need for confidentiality of certain information.

5.1.1(5) At the expiration of the term for which this Franchise is granted or upon the termination and cancellation as provided herein, the authority of the City to require the Franchisee to remove at its own expense any and all portions of the Cable or OVS System from the Rights-of-Way within the City; provided,

however, that this paragraph shall not be applicable if Franchisee is authorized to provide telecommunications service in City.

5.1.2 Federal, State, and City Jurisdiction.

5.1.2(1) This Ordinance and any Franchise Agreement will be construed in a manner consistent with all applicable federal and state laws.

5.1.2(2) In the event that the state or federal government will discontinue preemption in any area of cable television over which it currently exercises jurisdiction in such a manner as to expand rather than limit municipal regulatory authority, the City may, if it so elects, adopt rules and regulations in these areas to the extent permitted by law.

5.1.2(3) This Ordinance will apply to all Franchises granted or renewed from and after the effective date of this Ordinance.

5.1.2(4) Franchisee will not be relieved of its obligation to comply with any of the provisions of this Ordinance or any Franchise Agreement granted pursuant to this Ordinance by reason of any failure of the City to enforce prompt compliance.

5.1.2(5) In the event of a change in state or federal law which by its terms would require the City to amend this Ordinance, the parties shall modify the existing Cable Franchise in a mutually agreed upon manner.

5.2 Franchise Agreement.

5.2.1 The applicant awarded a Franchise by the City will execute a Franchise Agreement, agreeing to the terms and provisions of the Franchise and specifications of the Franchise as may be incorporated into the Franchise Agreement in writing. All Franchises granted by the City shall contain substantially similar terms and conditions and shall specifically require that the Franchisee serve the entire Franchise Area

5.2.2 In addition to those matters required elsewhere in this Ordinance to be included in the Franchise Agreement, it must contain the following express representations by the Franchisee that:

5.2.2(1) It accepts and agrees to all of the provisions of this Ordinance, and any supplementary specification, as to construction, operation, or maintenance of the System, which the City may include in the Franchise Agreement subject to applicable state and federal law.

5.2.2(2) It has examined all of the provisions of this Ordinance and agrees that the provisions thereof are valid, binding at this time, and enforceable as of the effective date of the Franchise.

5.2.2(3) It recognizes the right of the City to adopt such additional regulations of general applicability as it will find necessary in the exercise of its police power.

5.2.3 No Franchise will be exclusive.

5.2.4 Every Franchise will specifically require that the Franchisee serve the entire Franchise Area when residences number seven (7) per 1320 feet. Each connection within one hundred fifty feet (150) of the existing system shall be connected at no cost to the customer.

5.2.5 The Franchise Agreement will contain such further conditions or provisions as may be included in the request for proposal and negotiated between the City and the Franchisee, except that no such conditions or provisions will be such as to conflict with any provisions of this Ordinance or other law. In case of such conflict or ambiguity between any terms or provisions of the Franchise Agreement and this Ordinance, the Franchise Agreement will control.

5.3 Design, Services, and Capabilities.

5.3.1 Cable or OVS System Design. Every Franchisee shall offer Cable Service that meets the cable-related needs of the City. Such Cable Service shall, at a minimum, be comparable to Cable Services offered by that Franchisee or its Affiliates operating any headend serving the City and surrounding municipalities. The Cable Franchise shall incorporate a description of the Franchisee's Cable or OVS System including the general design and capabilities of the Cable or OVS System to identify how the Cable or OVS System will meet the current and future Cable needs of the City.

5.3.2 The Cable or OVS System. Every Cable or OVS System shall pass by every single-family dwelling unit within the Franchise Area in accordance with line extension policies set forth in this Ordinance. Service shall be provided to Subscribers in accordance with the schedules and line extension policies specified in this Ordinance.

5.3.3 Drops to Public Buildings.

5.3.3(1) Every Franchisee shall provide installation of at least one (1) Cable Drop and one (1) outlet, provide monthly Basic Cable Service, and maintenance of the same, without charge, to public buildings specified by the City in Exhibit B herein. All accredited K-12 schools, secondary private schools with students receiving funding under Title I of the Education and Secondary School Act of 1965, public libraries, and each police and fire station shall receive one (1) Cable Drop, one (1) drop, Basic Cable Service, and maintenance of the same at no charge, subject to the 150 foot limit. The location of such Cable drops and outlets shall be determined in cooperation with the management of the public building to which the connection is to be made. Following the City's designation of additional public buildings to receive Cable Service, a Franchisee shall complete construction of the Drop and the outlet within 180 days of the request, weather permitting and subject to payment of the commercially reasonable cost of

installation in excess of 150 feet. Drops and outlets that are in addition to the one free Drop and outlet required by this section shall be provided by a Franchisee at commercially reasonable cost. Alternatively, at an institution's request, the institution may add outlets at its own expense, as long as such installation meets the Franchisee's standards, which shall be made readily available to any public entity upon request. Additional outlets and Services to Public Buildings are subject to the applicable commercial rate.

5.3.3(2) All Cable Outlets provided for in this subsection shall not be utilized for commercial purposes. The City shall take reasonable precautions to prevent any use of a Franchisee's Cable or OVS System in any inappropriate manner or that may result in loss or damage to the Cable or OVS System. Users of such outlets shall hold the Franchisee harmless from any and all liability or claims arising out of their use of such outlets, other than those claims arising out of improper installation or faulty equipment.

5.3.3(3) In instances where the Drop line from the feeder cable to the public building, school, or library exceeds 150 feet, the Franchisee may charge for its commercially reasonable costs that are incurred in exceeding this length. A Franchisee may require advance payment of this cost.

5.3.4 Use of Franchisee's Facilities. Subject to any applicable state or federal regulations, the City shall have the right to install and maintain, upon the poles and within the underground pipes and conduits of a Franchisee, any wires and fixtures desired by the City for public purposes. . Provided, however, that (a) such use by Grantor shall not interfere with the current or future use by Franchisee or any pre-existing user or lessor of Franchisee's facilities; (b) such use by Grantor is restricted to non-commercial public purposes; (c) Grantor takes reasonable precautions to prevent and use of Franchisee's facilities in any manner that results in an inappropriate use thereof, or any loss or damage to the Cable or OVS System. For the purposes this subsection, "public purposes" includes, but is not limited to, the use of the structures and installations for City fire, police, traffic, utility, and/or signal systems, but not for commercial Cable or OVS System purposes in competition with the Franchisee; (d) to the extent provided by state law, the City holds Franchisee harmless against and from all claims, demands, costs, or liabilities of every kind and nature whatsoever arising out of such use of said poles or conduits; and (e) at the Franchisee's sole discretion, the City may be required either to pay a reasonable rental fee or otherwise reasonably compensate the Franchisee for the use of such conduit or other equipment.

5.3.5 Upgrade of the System and New Developments. Every Franchisee shall upgrade its Cable or OVS System (herein referred to as "System Upgrade"), if required, as set forth in its respective Franchise. Furthermore, the City may amend this Ordinance whenever necessary to enable the Franchisee to take advantage of any developments in the field of transmission of communication signals and upgrade the System which will afford it an opportunity to more effectively, efficiently, or economically serve its customers; provided that this Section will not be construed to require the City to make any such amendment and further provided that the City may not impose any capital or

operating expenditures on any Franchisee pursuant to this Section without the Franchisee's consent.

5.3.6 Emergency Alert Capability. Every Franchisee shall at all times provide the System capabilities to comply with the FCC's Emergency Alert System rules and regulations. Provided, that if the FCC at some future date eliminates the current regulations, the City and Franchisee shall mutually agree upon the applicable standard on a going forward basis.

5.3.7 Periodic Review and Evaluation. The City has determined that cable television technology, programs, and services are subject to continuing change. This includes change in law and regulations, as well as technological and service advancements. For this reason, it is essential that any Franchise which is granted pursuant to this Ordinance must include provisions for periodic review evaluation and modification and procedures and requirements relating to evaluation of the State of the Art technology and services permitting the City and Franchisee to agree to changes based upon review and in accordance with the procedures outlined in the Franchise Agreement.

5.3.8 Close Captioning and Descriptive Audio Service. Every Franchisee will make audio descriptive services and closed captioning capabilities available to the extent required by state and federal law.

5.3.9 HDTV/ATV Conversion. Conversion to High Definition Television/Advances Television (HDTV/ATV) formats shall occur in accordance with applicable law.

5.4 Public, Educational, and Governmental Access or PEG Access.

5.4.1 Access Channels.

5.4.1(1) Every Franchisee shall, to the extent required in its Franchise and subject to applicable law, provide or fund PEG Access Facilities in an amount equal to that provided by other Franchisee(s). Such requirements shall, at a minimum, satisfy the community need for such facilities and/or service as determined by the City or governing body for the period of the applicable Franchise and shall be established in the Franchise Agreement.

5.4.1(2) Every Franchisee shall also provide channel capacity, and support for Public, Educational, and Government Access Channels, as specified in their Franchise. All such PEG Access Channels shall be available to all Subscribers as part of their Basic Cable Service. Given the on-going changes in the state of technology as of the Effective Date of this Ordinance, absent express written consent of the City, Franchisee shall transmit PEG Access Channels in the format or technology utilized to transmit all of the Channels on the Basic Cable Service tier. Oversight and administration of the PEG Access Channels shall be set forth in the Franchise Agreement.

5.4.1(3) The City may require the Grantee to pay up to one percent (1%) per Subscriber, per month as a grant for the community's telecommunications-related capital needs. Such charge may be itemized as a "PEG Fee" and passed-through on Subscriber's bills.

5.4.1(4) The City may adopt or modify the "PEG Fee," up to the amount provided in paragraph 5.2a above, by adopting a Resolution identifying the amount thereof. The City shall provide written notice of any modification or adoption of the PEG fee to Grantee within 90 days of the proposed effective change. An equivalent fee shall be required of all other franchised video service providers.

5.4.1(5) The City, or its designee, may implement rules for use of any access channel(s).

5.4.2 Proof of Performance Testing. To ensure high quality of service on the Access Channels, results of proof of performance testing as required by applicable federal law throughout the System and on all required Channels will be made available to the City upon request to the extent required by the Franchise. Every Franchisee will monitor the Cable or OVS System to determine and ensure that the level of technical quality of the System's transmission of Access Channels is in conformance with the FCC Rules and is the same as on other Channels transmitted on the Cable or OVS System.

5.5 Construction Standards and Requirements.

5.5.1 Permit Required. Franchisee will not construct any Cable or OVS System facilities until Franchisee has secured the necessary permits from the City or other cognizant public agencies.

5.5.2 Construction Standards. All of the Franchisee's plant and equipment including, but not limited to, the antenna site, headend, and distribution System, towers, house connections, structures, poles, wire, cable, coaxial cable, fixtures, and appurtenances will be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained, and operated in accordance with good engineering practices, performed by experienced pole line construction crews and so as not to endanger or interfere with the safety of any Person or property, or to interfere with improvements the City may deem proper to make, or to interfere in any manner with the right of any property owner, or to unnecessarily hinder or obstruct pedestrian or vehicular traffic on City properties.

5.5.3 Compliance with City Ordinances for Work in Rights-of-Way. Any opening or obstruction in or disturbance of the Rights-of-Way or other municipal properties made by the Franchisee in the exercise of its rights under a Franchise Agreement will be done in compliance with City ordinances which regulate work in the public ways of the City, except that any bond requirements therein shall be waived in cognizance of the bond requirements of this Ordinance.

5.5.4 Compliance with City Ordinances for Construction and Building Standards. The Franchisee will comply with the minimum standards provided for by the applicable ordinances of the City adopted from time to time containing construction or building standards of general applicability; provided, however, that Franchisee shall not be required to modify or alter its Cable or OVS System unless such modification or alteration is necessary for the protection of public health, safety and welfare.

5.5.5 Removal and Relocation of Facilities. The Franchisee will, at its expense, protect, support, temporarily disconnect, relocate in the same Rights-of-Way, or other Right-of-Way, or remove from the Right-of-Way, any property of Franchisee when required by the City or its designee by reason of traffic conditions, public safety, street excavation, freeway, and street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power lines, signal lines, and tracks, or any other type of structures or improvements by public agencies. If the City compensates any utility for such work, the City must similarly compensate the Franchisee for such work.

5.5.6 Movement of Lines. The Franchisee will, on the request of any private party holding an appropriate permit issued by the City and upon five (5) days prior written notice, temporarily raise or lower its lines to permit the moving of any building or other structure, and the actual expense of the same will be paid in advance by the party requesting the same.

5.5.7 Tree Trimming. The Franchisee will have the right, with the prior approval of the City, except in emergency circumstances, to remove, trim, cut, and keep clear of its poles, wires, or cables, the trees in and along the streets of the City, but in the exercise of such right, the Franchisee will not cut or otherwise injure said trees to any greater extent than is reasonably necessary for the continued integrity of its poles, wires, or cables.

5.5.8 Responsible for Restoration and Costs. The Franchisee, in exercise of any right granted to it by the Franchise, will reconstruct, replace, restore, or repair any street, and any sewer, gas, or water main, pipe, electric, fire alarm, or police communications, off or on City property, or Right-of-Way or traffic control facility of the City which may be damaged or destroyed by the exercise of any such right, to a condition as good as that prevailing before said work to the reasonable satisfaction of the City. The City reserves the right to determine whether the Franchisee has properly complied with the provisions of this paragraph and in the event it is determined that the Franchisee has failed to do so, the City will have the right to, following notice to the Franchisee and reasonable opportunity for the Franchisee to cure, enforce such provisions, and the Franchisee will reimburse the City in full for all expenses incurred by the City in carrying out all or part of such provisions.

5.5.9 Failure to Complete Work. Upon failure of the Franchisee to commence, pursue, or complete any work required by law or by the provisions of this Ordinance to be done in any Rights-of-Way, within the time prescribed, and to the reasonable satisfaction of the City or its designee, the City or its designee may, following notice to the Franchisee and reasonable opportunity for the Franchisee to cure, at its option, cause such work to be done. The Franchisee will pay to the City the cost thereof in the itemized amounts

reported by the City or its designee to Franchisee within 30 days after receipt of such itemized report.

5.6 Technical Standards.

5.6.1 Compliance with OSHA. All construction practices will be in accordance with all applicable sections of the Occupational Safety and Health Act of 1970, as amended, as well as all other applicable local, state, and federal laws and regulations.

5.6.2 Compliance with National Electrical Codes. All Installation of electronic equipment will be installed in accordance with the provisions of the National Electrical and Safety Code and National Electrical Code as amended.

5.6.3 Compliance with FAA Regulations. Antennae and their supporting structures (towers) will be painted, lighted, erected, and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other local, state, and federal laws and regulations.

5.6.4 Test and Compliance Procedure. Tests for the Cable or OVS System shall be performed periodically in a manner so as to conform with FCC specifications. The tests may be witnessed by representatives of the City and written test results shall be made available to the City within 30 days of a request.

5.6.5 Additional Tests. At any time after commencement of Service to Subscribers, the City may require the Franchisee to perform additional tests, full or partial repeat tests, or tests involving a specific Subscriber's Drop. Such additional tests may be made on the basis of Complaints received or other evidence indicating an unresolved controversy or significant noncompliance, and such tests will be limited to the particular matter in controversy. The City will be able to designate a representative to be present during the testing. If a test indicates that the Franchisee is in compliance with FCC standards and requirements, the City will bear the expense of such test. If a test indicates that the Franchisee is not in compliance with FCC standards and requirements, the Franchisee will bear the expense of such test. The City will endeavor to so arrange its requests for such special tests so as to minimize hardship or inconvenience to Franchisee or to the Subscriber.

5.7 Repair.

Any damage caused to the property of building owners or users or any other Person by the Franchisee's negligence will be repaired fully to a condition as good as that prevailing before said work by the Franchisee.

5.8 Removal of Facilities From Subscriber's Premises Upon Request.

Upon termination of service to any Subscriber, the Franchisee will promptly remove all its facilities and equipment from the premises of such Subscriber upon his or her request.

5.9 Transfer of Ownership.

5.9.1 Franchisee will not sell, transfer, lease, assign, sublet, or dispose of any Franchise awarded under this Ordinance or any of the rights or privileges granted by the Franchise to any Person other than an Affiliate of Franchisee, without the prior consent of the City, which consent will not be unreasonably withheld and may be denied only upon a good faith finding by the City that the proposed transferee lacks the legal, technical, or financial qualifications to consummate the transaction and operate the Cable or OVS System so as to perform its obligations under the Cable Franchise. This section shall not apply to sales or property or equipment in the normal course of business.

Further, any sale or transfer and the consent thereto, will comply with applicable legal requirements. Any attempt to sell, transfer, lease, assign, or otherwise dispose of the Franchise and/or the Cable or OVS System without the consent of the City except as otherwise provided herein will be null and void. The granting of a security interest in any of Franchisee's assets, or any mortgages or other hypothecation, will not be considered a transfer for the purposes of this Section.

5.9.2 Any change of control of Franchisee will be deemed to be a "sale" or "transfer" of the Franchise. A "change of control" will include any stock sale by Franchisee to, or any merger or consolidation with, any Person (or group of Persons acting in concert) that is not an Affiliate of Franchisee before such transaction but shall not include the transfer of ownership or control of a Franchisee's limited or non-managing general partner. The sale, assignment, or other transfer of all or a majority of a Franchisee's assets in the City shall also constitute a sale or transfer.

5.9.3 The Franchisee must comply with provisions of the Cable Act regarding transfers of ownership and any other state, federal, or local laws which are applicable.

5.9.4 The Franchisee will notify the City in writing of any foreclosure or any other judicial sale of all or a substantial part of the property of the Franchisee or upon the termination of any lease or interest covering all or a substantial part of said franchised property. Such notification will be considered by the City as notice that a change in control or ownership of the Franchise has taken place and the provisions under this Section governing the consent of the City to such change in control or ownership will apply.

5.9.5 For the purpose of determining whether it will consent to such a change, transfer, or acquisition of control, the City may inquire into the qualifications of the prospective transferee or controlling party, and the Franchisee will assist the City in any such inquiry. The transferee will be required to establish that it possesses the legal, technical, and financial qualifications to operate and maintain the System and comply with all Franchise requirements for the remainder of the term of the Franchise. After considering the legal, financial, and technical qualifications of the transferee and determining that they are satisfactory, the City may approve the transfer of rights and obligations of said Franchise.

5.9.6 As a condition of transfer of ownership or control any proposed transferee shall execute an agreement, in such form as acceptable to the City Attorney, that it will assume and be bound by all of the provisions, terms and conditions of this Ordinance and any Franchise granted pursuant to it.

5.9.7 Any financial institution having a pledge of the Franchisee or its assets for the advancement of money for the construction and/or operation of the Franchise will have the right to notify the City that it or its designee satisfactory to the City will take control of and operate the Cable Television System, in the event of a Franchisee default in its financial obligations. Said financial institution will also submit a plan for such operation within 30 days of assuming such control that will assure continued service and compliance with all Franchise requirements during the term the financial institution exercises control over the System. The financial institution will not exercise control over the System for a period exceeding one year unless extended by the City in its discretion and during said period of time it will have the right to petition the to transfer the Franchise to another Franchisee.

5.9.8 Notwithstanding anything to the contrary contained herein, no such prior consent will be required for any transfer or assignment to any Person controlling, controlled by, or under the same common control as the Franchisee.

5.9.9 The City reserves any legal right it has under applicable law to require a Franchisee to pay all costs and expenses incurred by the City in connection with the sale, assignment, or transfer of a Cable Franchise, including, but not limited to, the City's costs of reviewing the qualifications of any proposed transferees.

5.10 Purchase by City.

Subject to the Cable Act, if a Franchise is revoked for cause, the City may, to the extent permitted by federal law, acquire that portion of the Cable or OVS System serving the City upon payment of an equitable price or affect a transfer of ownership of the same to another Person.

5.11 Requests for Cable Service.

A Franchisee will provide Cable Service to any requesting Subscriber within the City within 30 days from the date of request, weather permitting.

5.12 Multiple Franchises.

5.12.1 Grant of Additional Franchise. The City may grant one or more Franchises for the City. Each Franchise Agreement granted shall contain substantially similar terms and conditions including the service area. The City may, in its sole discretion, limit the number of Franchises granted based upon, but not necessarily limited to, the requirements of applicable laws and specific local considerations, such as:

5.12.1(1) The capacity of the public Rights-of-Way to accommodate multiple coaxial cables in addition to the cables, conduits, and pipes of the utility systems, such as

electrical, power, telephone, gas, and sewerage and the potential disruption of those Rights-of-Way and private property that may occur if one or more additional Franchises are granted.

5.12.1(2) The impact on the community of having multiple Franchises.

5.12.1(3) The amount of time it will take the applicant to complete construction of the proposed Cable or OVS System and activate Cable Service in the entire Franchise Area; and, whether the applicant can complete construction and activation of its Cable or OVS System in a timely manner.

5.12.1(4) The disruption on the availability of Cable Service within the City.

5.12.1(5) Such other information as the City may deem appropriate to be considered prior to granting any competing or overlapping Franchise.

5.12.2 Permits for Non-Franchised Entities. The City may issue a license to a Person other than the Franchisee to permit that Person to traverse any portion of a Franchisee's Franchise Area within the City in order to provide Cable Service outside, but not within the City. Such a license or easement, absent a grant of a Franchise in accordance with this Ordinance, shall not authorize nor permit said Person to provide Cable Service of any type to any home or place of business within the City.

5.13 Discriminatory or Preferential Practice.

5.13.1 Rates and Charges. The Franchisee will not, in its rates or charges, or in making available the services or facilities of its System, or in its rules or regulations, or in any other respect, make or grant preferences or advantages to any Subscriber or potential Subscriber to the System, or to any user or potential user of the System; and will not subject any such Persons to any prejudice or disadvantage. The foregoing will not be deemed to prohibit or preclude promotional rates or charges.

5.13.2 Access and Employment. The Franchisee will not deny service, deny access, or otherwise discriminate against Subscribers on the basis of race, creed, color, religion, national origin, or sex. The Franchisee will comply at all times with applicable equal employment opportunity requirements and all other applicable federal, state, and local laws and regulations, and all executive and administrative orders relating to nondiscrimination which are hereby incorporated and made part of this Ordinance by reference.

5.13.3 Build-Out. A Franchisee may not discriminate in the build-out of its Cable or OVS System to a particular area of the City or provision of Cable Service to individual groups of residents on the basis of race, creed, color, religion, national origin, sex, or economic condition.

5.14 Subscriber Privacy.

The Franchise will comply with the Subscriber privacy standards located in 47 U.S.C. § 551. If the standards in 47 U.S.C. § 551 cease to exist, the City will have the right to implement the following:

No signal will 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 such permission will be contained in a separate document with a prominent statement that the Subscriber is authorizing the monitoring and acknowledging the provisions. The authorization will be revocable at any time by the Subscriber without penalty of any kind whatsoever; provided, however, that the Franchisee will be entitled, without permission, to conduct System-wide or individually addressed "sweeps" for the purpose of verifying System integrity, controlling return transmission, or billing for services.

5.15 Permits and Authorizations.

The Franchisee or applicant for Franchise will diligently apply for all necessary permits and authorizations required in the conduct of its business, and will diligently pursue the acquisition thereof, including necessary pole attachment contracts, and necessary authorizations from the Federal Aviation Administration to construct such receiving antenna towers as may be required, and any necessary authorizations or waivers from the FCC. After the Franchisee has diligently pursued the acquisition of necessary pole attachment contracts, or other necessary easements, and where such necessary contracts have not been entered or easements obtained after a reasonable period of time, the Franchisee may submit the matter to the City and the City may thereupon provide assistance that may be necessary to arrive at a solution so that scheduled construction of the System will not be impaired.

5.16 Annual Reports.

5.16.1 Contents. Upon request of the City, each Franchisee will file an Annual Report. Such Report will include:

5.16.1(1) An ownership report, identifying all Persons who at any time during the preceding year controlled or benefited from an interest in the Franchisee of five percent or more.

5.16.1(2) Copies of all rules, regulations, terms, and conditions the Franchisee has adopted for the conduct of its business.

5.16.1(3) A summary of any customer surveys conducted that year.

5.16.1(4) A summary of the previous year's (or in the case of the initial reporting year, the initial year's) activities in development of the Cable or OVS

System, including but not limited to, services begun or discontinued during the reporting year.

5.16.1(5) A list of Franchisee's officers, board members, and other principals and a current list of the addresses of each officer and director and other management personnel of the Franchisee.

5.16.1(6) A revenue statement certified by a representative of the Franchisee showing the Gross Revenues of the Franchisee for the proceeding fiscal year.

5.16.1(7) A statement of the Franchisee's current billing practices and charges.

5.16.1(8) As part of the Annual Report, Franchisee will provide to the City the following statistical information:

(i) Statistics compiled on a quarterly basis recording service calls in which a technician or repairman is dispatched to a residence to correct a reception problem. Such records should be kept pursuant to Section 7.6.

(ii) Franchisee's leakage log.

(iii) Records of Complaints called or written into the System and kept in the ordinary course of business. Such records should be kept pursuant to the requirements of Section 7.6.

Upon request, Franchisee will allow the City Administrator or his or her designee to review a detailed plan (map) of the System at its offices.

5.16.2 Service Contract and Subscriber Information.

5.16.2(1) A Franchisee shall have authority to promulgate such rules, regulations, terms, and conditions governing the conduct of its business as shall be reasonably necessary to enable the Franchisee to exercise its rights and perform its obligations under this Ordinance and a Franchise Agreement and to assure uninterrupted Cable Service to all of its Subscribers; provided such rules, regulations, terms, and conditions shall not be in conflict with the provisions of this Ordinance, federal, state, and or local law, or any applicable rules and regulations.

5.16.2(2) Upon request, a Franchisee shall submit to City any standard residential Subscriber contract form that it utilizes. If no written form exists, upon request, a Franchisee shall file with the City a document completely and concisely stating the terms of the standard residential Subscriber contract offered.

5.17 Indemnification, Security Funds, Insurance.

5.17.1 Liability and Indemnification. The Franchisee will indemnify, hold harmless, release, and defend the City, its officers, agents, and employees from and against any and all lawsuits, claims, causes of action, actions, liability, demands, damages, disability losses, expenses including reasonable attorneys' fees, and costs or liabilities of any nature that may be asserted by any Person or entity from any cause whatsoever including another's concurring negligence arising from injury to Persons or damages to property to the extent caused by any conduct undertaken by the Franchisee, its officers, agents, or employees, by reason of its construction, operation, or maintenance of its System. Such damages and penalties will include, but not be limited to, damages arising out of copyright infringements, and all other damages arising out of the installation, operation, or maintenance of the Cable or OVS System authorized herein, whether or not any act or omission complained of is authorized, allowed, or prohibited by the Franchise, except that a Franchisee will not be liable for payment of damages and penalties arising from any acts or omissions by the City, its agents, or employees. If a lawsuit is filed against the City, either independently or jointly with the Franchisee to recover for any claim or damages, the Franchisee, upon notice to it by the City, will, at its sole cost and expense, defend and fully control the defense of the City against the action and, in the event of a final judgment being obtained against the City, either independently or jointly with the Franchisee solely by reason of the acts of the Franchisee, the Franchisee will pay said judgment and all costs and hold the City harmless therefrom. However, the Franchisee may not enter into any compromise, settlement, resolution, or disposition of a claim or proceeding that may create or impose liability for the City without obtaining the City's written consent thereto which shall not be unreasonably withheld. In order for the City to assert its rights to be indemnified and held harmless, the City must:

5.17.1(1) Notify Franchisee of any claim or legal proceeding which gives rise to such right;

5.17.1(2) Afford Franchisee the opportunity to participate in and fully control any compromise, settlement, resolution, or disposition of such claim or proceeding; and

5.17.1(3) Fully cooperate in the defense of such claim and make available to Franchisee all such information which it may lawfully furnish to Franchisee and relating to the claim.

5.17.2 Security Funds. The City may require the Franchisee to file with the City Administrator/Clerk-Treasurer, concurrently with its acceptance of the Franchise and at Franchisee's sole expense a corporate surety bond, construction bond, performance bond, and/or security fund. Such bond and/or security fund will be in an amount specified in the Franchise Agreement, issued by a responsible company licensed to do business in Minnesota and conditioned upon the faithful performance of the Franchisee to meet its obligations under this Ordinance and the Franchise. The Franchisee shall be required to replenish any such bond within thirty (30) days after the City draws down upon it.

5.17.3 General Provisions Relating to Insurance.

5.17.3(1) During the course of a Franchise Agreement, the Franchisee will be required to maintain liability insurance, to protect the City and the Franchisee from and against any and all claims, injury, or damage to Persons or property, both real and personal, caused by the construction, erection, operation, or maintenance of any aspect of the System. The amount of insurance will be specified in the Franchise Agreement.

5.17.3(2) The Franchisee will provide workers' compensation insurance as required by state law.

5.17.3(3) All such insurance coverage will provide a thirty (30) day notice to the City Administrator in the event of material alteration or cancellation of any coverage afforded in said policies prior to the date said material alteration or cancellation will become effective.

5.17.3(4) Copies of all certificates evidencing insurance will be furnished to and filed with the City Administrator prior to the commencement of operations or the expiration of prior policies, as the case may be.

5.17.3(5) It will be the obligation of Franchisee to promptly notify the City of any pending or threatened litigation that would be likely to affect the Franchisee's insurance coverage.

5.17.4 Liability Insurance.

A. As of the effective date of this Franchise Agreement, the Franchisee will, at its sole expense, maintain during the entire term of this Franchise public liability insurance with a company licensed to do business in the State of Minnesota with a rating by Best of not less than "B" that will protect the Franchisee, the City, and the City's officials, officers, employees, and agents from claims which may arise from operations under this Franchise except claims brought by City employees which are covered by Worker's Compensation, whether such operations are by the Franchisee, its officials, officers, directors, employees, or agents, or any subcontractors of Franchisee. This liability insurance will include, but will not be limited to, protection against claims arising from bodily and personal injury, and damage to property resulting from the Franchisee's automobiles, products, and completed operations. The amount of such insurance will be not less than the following:

1. General liability insurance:

Bodily injury per Person	\$1,000,000
Bodily injury per occurrence	\$1,000,000
Property damage per occurrence	\$1,000,000
Property damage and bodily injury, aggregate	\$5,000,000

2. Automobile insurance:

Bodily injury per Person	\$1,000,000
--------------------------	-------------

Bodily injury per occurrence	\$1,000,000
Property damage per occurrence	\$1,000,000

3. Umbrella coverage: \$1,000,000

B. The liability policy will provide for the following, by endorsement or otherwise:

1. The policy will cover personal injury as well as bodily injury.

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

3. Broad form property damage liability will be afforded.

4. The City will be included as an additional insured on the policy.

5. The coverage is primary insurance and no other insurance or fund of the City will be called upon to contribute to a loss under this coverage.

6. Standard form of cross-liability will be afforded.

7. The policy will not be canceled without thirty (30) days prior written notice of such cancellation to the City.

C. The automobile insurance policy will provide for the following, by endorsement or otherwise:

1. The City will be included as an additional insured on the policy.

2. The policy will not be canceled without thirty (30) days prior written notice of such cancellation to the City.

D. Upon ninety (90) days prior written notice to Franchisee, the City reserves the right to adjust the limit coverage requirements no more than every five (5) years. Any such adjustment by the City will be no greater than the increase in the State of Minnesota Consumer Price Index for such five-year period.

E. Franchisee will submit to the City documentation of the required insurance including a certificate of insurance signed by the insurance agent and companies named, as well as all properly executed endorsements required by this Section 2.2. The certificate of insurance should confirm that the required endorsements are in effect.

F. Any deductible or self-insured retention must be declared to the City.

G. Franchisee will have insurance coverage sufficient to cover any claim in the event that Franchisee sells or transfers the system, or in the event of termination or revocation of this Franchise.

H. It will be the obligation of the Franchisee to notify the City promptly of any pending or threatened litigation likely to negatively impact its ability to provide the insurance coverage required herein.

5.17.5 Non-Waiver. Neither the provisions of this Section, nor any bonds accepted by the City pursuant thereto, nor any damages recovered by the City thereunder will be construed to excuse unfaithful performance by the Franchisee or limit the liability of the Franchisee under this Ordinance or the Franchise for damages, either to the full amount of the bond or otherwise.

5.18 Continuity of Service.

5.18.1 It will be the right of all Subscribers to continue receiving Cable Services insofar as their financial and other obligations to the Franchisee are honored. In the event that the Franchisee elects to rebuild, modify, or sell the System, or the City gives notice of intent to terminate or fails to renew the Franchise, the Franchisee will act so as to insure that all Subscribers receive continuous, uninterrupted service, subject to compliance with federal and state laws.

5.18.2 In the event of a change of the Franchisee, or in the event a new operator acquires the System, the Franchisee will cooperate with the City's new Franchisee or operator in maintaining continuity of Cable Service to all Subscribers. During such period, Franchisee will be entitled to the revenues for any period during which it operates the System and will be entitled to reasonable cost for its services when it no longer operates the System.

5.19 Safety Requirements.

5.19.1 The Franchisee will at all times employ ordinary care and will install, maintain, and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.

5.19.2 The Franchisee will install and maintain its wires, cables, fixtures, and other equipment in accordance with the requirements of the National Electrical Safety Code of the Institute of Electrical and Electronic Engineers; the National Electrical Code of the National Fire Protection Association; the Bell System Code of Pole Line Construction; and applicable federal, state, and local regulations.

5.19.3 All structures and all lines, equipment, and connections in, over, under, and upon the Rights-of-Way of the City, wherever situated or located, will at all times be kept and maintained in a safe, suitable, substantial condition and in good order and repair.

SECTION 6: FRANCHISE FEES

6.1 Five Percent Franchise Fee.

During the term of any Franchise granted pursuant to this Ordinance, the Franchisee will pay to the City for the use of its Rights-of-Way an annual franchise fee in an amount of five percent of the annual Gross Revenues as compensation for the grant of a Franchise and in consideration of permission to use the Rights-of-Way of the City for the construction, operation, maintenance, and reconstruction of a Cable or OVS System, and to defray the costs of Franchise obligations. This payment will be in addition to any other tax or payment owed to the City by the Franchisee and does not include rental of poles or underground conduits. Further, every Franchisee that offers any “bundled” services shall fairly reflect as part of its calculation of applicable Franchise Fees an appropriate and reasonable division of services among the various services offered. The specific cost accounting for such revenue attribution shall be set out in the individual Franchise or other agreement.

6.2 Payment and Audits.

Sales tax or other taxes levied directly on a per subscription basis and collected by Franchisee will be deducted from Gross Revenues before computation of sums due the City is made. Payments due the City under the terms of this Ordinance will be computed and paid monthly.. The City will be furnished a statement with each payment, certified as correct by the Franchisee, reflecting the total amount of Gross Revenues and the above charges, deductions, and computations for the one-month payment period covered by the payment. Upon 10 days prior written notice, the City will have the right to conduct an independent audit of Franchisee's records, in accordance with generally accepted accounting principles and if such audit indicates a franchise fee underpayment of five percent or more, the Franchisee will assume all reasonable costs of the audit. Any additional amount due the City as a result of such audit will be paid within 30 days following written notice by the City to the Franchisee, which notice will include a copy of the audit report.

6.3 Acceptance of Payment.

No acceptance of any payment will be construed as a release or accord and satisfaction of any claim the City may have for further or additional sums payable as a franchise fee under this Ordinance or the Franchise Agreement or for the performance of any other obligation hereunder.

6.4 Failure to Pay.

Failure to pay any fees required by this Section within 10 days of receipt of written notice of such failure from the City will be grounds for termination of the Franchise and reinstatement thereof may be had only upon resolution by the City Council.

6.5 Penalty for Late Payment.

In the event that any franchise fee payment or recomputed amount is not made on or before the dates specified above, Franchisee will pay as additional compensation an interest charge, computed from such due date, at an annual rate equal to the prime lending rate plus one and one-half percent during the period for which payment was due and unpaid.

6.6 Monthly Report of Gross Revenues.

Each Franchisee will file with the City monthly reports in the form provided as Exhibit A hereto, of Gross Revenues certified as correct by the Franchisee.

SECTION 7: CUSTOMER SERVICE STANDARDS

7.1 Compliance.

Franchisee shall comply with the customer service standards of the FCC, as outlined in this Section.

7.2 Cable or OVS System Office Hours and Telephone Availability.

7.2.1 Franchisee will maintain a local, toll-free, or collect call telephone access line which will be available to its Subscribers twenty-four (24) hours per day, seven days per week.

7.2.1(1) Trained Franchisee representatives will be available to respond to customer telephone inquiries during Normal Business Hours.

7.2.1(2) After Normal Business Hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after Normal Business Hours must be responded to by a trained Franchisee representative on the next business day.

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

7.2.3 The Franchisee will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless a historical record of Complaints indicates a clear failure to comply.

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

7.2.5 Customer service center and bill payment locations shall be open at least during Normal Business Hours and will be conveniently located.

7.3 Installations, Outages, and Service Calls.

Under Normal Operating Conditions, each of the following four standards will be met no less than ninety percent (90%) of the time measured on a quarterly basis:

7.3.1 Standard Installations will be performed within seven business days after an order has been placed. "Standard" Installations are those that are located up to one hundred fifty (150) feet from the existing distribution System.

7.3.2 Excluding conditions beyond the control of Franchisee, Franchisee's representatives will be available to begin working on Service Interruptions within twenty-four (24) hours after the interruption becomes known Franchisee must begin actions to correct other service problems the next business day after notification of the service problem.

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

7.3.4 Franchisee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

7.3.5 If Franchisee'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.

7.4 Communications Between Franchisee and Subscribers.

7.4.1 Notifications to Subscribers.

7.4.1(1) The Franchisee will provide written information on each of the following areas at the time of Installation of service, at least annually to all Subscribers, and at any time upon request:

- (i) Products and services offered;
- (ii) Prices and options for programming services and conditions of subscription to programming and other services;
- (iii) Installation and service maintenance policies;
- (iv) Instructions on how to use the Cable Service;

- (v) Channel positions programming carried on the System; and
- (vi) Billing and Complaint procedures, including the address and telephone number of the City official who handles cable issues.

7.4.1(2) Subscribers will be notified of any changes in rates, programming services, or Channel positions as soon as possible in writing. Notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the Franchisee. In addition, the Franchisee will notify Subscribers 30 days in advance of any significant changes in the other information required by the preceding subparagraph. Notwithstanding any other provision, Franchisee shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, franchise fee or any other fee, tax, assessment or charge of any kind imposed by any federal agency, state or franchise authority on the transaction between Franchisee and the Subscriber.

7.4.2. Billing.

7.4.2(1) Bills will be clear, concise, and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates, and credits.

7.4.2(2) In case of a billing dispute, the Franchisee must respond to a written Complaint from a Subscriber within thirty (30) days.

7.4.3 Refunds. Refund checks will be issued promptly, but no later than either:

7.4.3(1) The customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or

7.4.3(2) The return of the equipment supplied by the Franchisee if service is terminated.

7.4.4 Credits. Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

7.5 Parental Control.

Every Franchisee shall make available to any Subscriber upon request a "lockout" device, which may be included within the converter, for blocking both video and audio portions of any channel(s) of programming entering the Subscriber's premises. Such device shall be provided at a reasonable charge, except to the extent that federal law specifically provides otherwise. A Franchisee may, however, require a reasonable security deposit for the use of such device.

7.6 Complaint Log.

Subject to the privacy provisions of 47 U.S.C. § 521 et. seq., every Franchisee shall prepare as necessary and maintain written records of Complaints made to them and the resolution of such Complaints, including the d*ate of such resolution. Such Complaint logs shall be on file for three (3) years, and available for inspection by the City with reasonable prior notice.

SECTION 8: GENERAL

8.1 Subscriber Rates.

8.1.1 City may regulate rates as permitted by applicable law.

8.2 Records Required and City's Right to Inspect.

8.2.1 Franchisee will at all times maintain:

8.2.1(1) A full and complete set of plans, records, and "as-built" maps showing the location of the Cable Television System installed or in use in the City, exclusive of Subscriber Service Drops and equipment provided in Subscribers' homes.

8.2.1(2) If requested by City, a summary of service calls, identifying the number, general nature, and disposition of such calls, on a monthly basis to the extent kept in the regular course of business.

8.2.2 The Franchisee agrees that the Franchisor, upon thirty (30) days written notice to the Franchisee, may review such of its books and records at the Franchisee's business office, during normal business hours and on a nondisruptive basis, as is reasonably necessary to ensure compliance with the terms of this Franchise. Such notice shall specifically reference the Section of the Franchise which is under review, so that the Franchisee may organize the necessary books and records for easy access by the Franchisor. The Franchisee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years. Notwithstanding anything to the contrary set forth herein, the Franchisee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature, nor disclose books and records of any affiliate which is not providing Cable Service in the Service Area.

8.2.3 The Franchisor agrees to treat any information disclosed by the Franchisee as confidential and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof. Information required to be filed with the City pursuant to this Ordinance is subject to public inspection and copying pursuant to Minnesota law concerning public and nonpublic information. The City shall provide the Franchisee with notice of any request for information designated by the Franchisee as proprietary. Nothing in this Ordinance or Franchise shall be construed as a waiver of the provisions of Minnesota law applicable to public and nonpublic information. The City shall not make information designated as proprietary open for public inspection or copying except as may be required by law. The Franchisee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act.

8.2.4 The City will have the right to request copies of any petitions, applications, communications, and reports submitted by Franchisee or on its behalf to the FCC, Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction with respect to any matters affecting the Cable or OVS System authorized pursuant to this Ordinance and any Franchise, as such documents relate to Franchisee's operation of its System under the Franchise. Copies of responses from the regulatory agencies to Franchisee will likewise be furnished to the City upon request. If the City is specifically named in any such pleading or response, the City shall automatically be furnished a copy.

8.3 Abandonment or Removal of Franchise Property.

8.3.1 Abandonment. In the event that the use of any property of Franchisee within the Franchise Area or a portion thereof is discontinued for a continuous period of 12 months, Franchisee will be deemed to have abandoned that Franchise property.

8.3.2 Removal. The City, upon such terms as City may impose, may give Franchisee permission to abandon, without removing, any System facility or equipment laid, directly constructed, operated, or maintained under the Franchise. Unless such permission is granted or unless otherwise provided in this Ordinance, the Franchisee will remove all abandoned above-ground facilities and equipment upon receipt of written notice from City and will restore any affected street, alley, or public property to its former state at the time such facilities and equipment were installed, so as not to impair its usefulness. In removing its plant, structures, and equipment, Franchisee will refill, at its own expense, any excavation that will be made by it and will leave all Rights-of-Way in as good condition as that prevailing prior to such removal without materially interfering with any electrical or telephone cable or other utility wires, poles, or attachments. The City will have the right to inspect and approve the condition of the Rights-of-Way, cables, wires, attachments, and poles prior to and after removal. The liability, indemnity, and insurance provisions of this Ordinance and the security fund as provided herein will continue in full force and effect during the period of removal and until full compliance by Franchisee with the terms and conditions of this Section.

8.3.3 Transfer of Abandoned Property. Upon abandonment of any Franchise property in place, the Franchisee, if required by the City, will submit to the City an instrument, satisfactory in form to the City, transferring to the City the ownership of the Franchise property abandoned.

8.3.4 Above Ground Portion of System. At the expiration of the term for which the Franchise is granted and a denial of any renewal, or upon its revocation or earlier expiration, as provided for herein, in any such case without renewal, extension, or transfer, the City will have the right to require Franchisee to remove, at its own expense, all above-ground portions of the Cable Television System from all Rights-of-Way within the City within a reasonable period of time, but will not be less than 180 days.

8.3.5 No Material Interference. Notwithstanding anything to the contrary set forth in this Ordinance, the Franchisee may abandon any underground Franchise property in place

so long as it does not materially interfere with the use of the Rights-of-Way in which such property is located or with the use thereof by any public utility or other cable Franchisee.

8.4 Rights Reserved to City.

8.4.1 In addition to any rights specifically reserved to the City by this Ordinance, the City reserves to itself every right and power which is required to be reserved by a provision of any ordinance or under the Franchise Agreement.

8.5 Force Majeure.

Franchisee's Inability to Perform. In the event Franchisee's performance of any of the terms, conditions, or obligations required by this Ordinance or a Franchise granted hereunder is prevented by a cause or event not within Normal Operating Conditions or otherwise not within the Franchisee's control, such inability to perform will be deemed excused and no penalties or sanctions will be imposed as a result thereof.

For the purpose of this Section, causes or events not within the control of Franchisee include but are not limited to: acts of God, strikes, sabotage, riots or civil disturbances, restraints imposed by order of a governmental agency or court, failure or loss of utilities, explosions, acts of public enemies, and natural disasters such as floods, earthquakes, landslides, weather, inability to obtain equipment, and fires.

8.6 Non-Enforcement Not Estoppel.

The Franchisee will not be relieved of its obligation to comply promptly with any of the provisions of the Franchise by any failure of the City to enforce prompt compliance.

8.7 Procedure for Remedying Franchise Violations.

If Franchisee fails to perform in a timely manner any material obligation required by Ordinance or a Franchise Agreement, following notice from the City and an opportunity to cure such non-performance, the City may remedy such violation in accordance with the following procedures:

8.7.1 The City will first notify a Franchisee of the violation in writing by delivery of registered or certified mail, and demand correction within a reasonable time, which will not be less than twenty-five (25) days in the case of the failure of a Franchisee to pay any sum or other amount due the City under this Ordinance or a franchise, and not less than forty-five (45) days in all other cases. If a Franchisee fails to correct the violation within the time prescribed or if Franchisee fails to commence corrective action within the time prescribed and diligently remedy such violation thereafter, a Franchisee will then be given a written notice of not less than thirty (30) days of a public hearing to be held before the City Council. Said notice will specify the violations alleged to have occurred.

8.7.2 At the public hearing, the City Council will hear and consider all relevant evidence, and thereafter render findings at its decision.

8.7.3 In the event the City Council finds that a Franchisee has corrected the violation or has diligently commenced correction of such violation after notice thereof from the City and is diligently proceeding to fully remedy such violation, or that no material violation has occurred, the proceedings will terminate and no penalty or other sanction will be imposed.

8.7.4 In the event the City Council finds that a material violation exists and that Franchisee has not corrected the same in a satisfactory manner or has not diligently commenced correction of such violation, the City Council may establish a date of not less than thirty (30) days, by which a Franchisee must comply with the obligation or the City may thereafter impose liquidated damages, payable from the security fund, in the amounts stated in this Ordinance. The City Council may also commence the Franchise termination procedures outlined in this Ordinance.

8.7.5 In determining whether a violation is material, the City will take into consideration the reliability of the evidence of the violation, the nature of the violation, and the damage, if any, caused to the City or the City's residents thereby, whether the violation was chronic, and any justifying or mitigating circumstances, and such other matters the City may deem appropriate.

8.7.6 If the violation as proposed depends on a finding of fact, such finding of fact will be made by the City only after an administrative hearing providing a Franchisee with a full and fair opportunity to be heard. A Franchisee will have the right to appeal any such decision to a state court or a federal district court or a federal court as a Franchisee may choose and the revocation or penalty will not become effective until any such appeal has become final or the time for taking such appeal will have expired.

8.8 Penalty.

In the event, after complying with the due process procedures provided herein, the City finds that a material violation exists and that Franchisee has not corrected the same in a satisfactory manner or has not diligently commenced correction of such violation, the City may establish a date, no earlier than thirty (30) days, by which Franchisee must comply with the obligation or the City may thereafter impose liquidated damages, payable from the security fund, in the following amounts:

8.8.1 For failure to complete any upgrade, modifications, or construction in accordance with a Franchise Agreement unless the City approves the delay, the penalty will be one hundred dollars (\$100) per day for each day, or part thereof, such failure occurs or continues.

8.8.2 For failure to provide data, documents, reports, or information, or to cooperate or participate with the City during a renewal process or the System review, the penalty will be fifty dollars (\$50) per day.

8.8.3 For failure to comply with any provision of the Customer Service standards in Section 7 of this Ordinance, the penalty will be fifty dollars (\$50) per day.

8.8.4 For failure to test, analyze, and report on the performance of the System following a request by the City, the penalty will be fifty dollars (\$50) per day.

8.8.5 For failure to comply with operation or maintenance standards, the penalty will be fifty dollars (\$50) per day.

8.8.6 For failure to provide the services described in a Franchise Agreement, the penalty will be fifty dollars (\$50) per day.

8.8.7 For failure to comply with all conditions of the City permits to disturb Rights-of-Way, fix Rights-of-Way, or other terms or conditions of the City, the penalty will be fifty dollars (\$50) per day.

8.8.8 For failure to give notices required by this Ordinance or a Franchise Agreement to City or departments of the City, the penalty will be fifty dollars (\$50) per day.

8.8.9 For failure to comply with any provision of this Ordinance or a Franchise Agreement, for which a penalty is not otherwise specifically provided, the penalty will be fifty dollars (\$50) on occurrence and per day thereafter such failure continues.

8.9 Revocation or Termination of a Franchise and the Franchise Agreement.

8.9.1 Upon completion of the term of a Franchise Agreement, if a new, extended, or renewed Franchise is not granted to a Franchisee by the City, a Franchisee's right to occupy the Public Rights-of-way shall terminate, subject to applicable federal law.

8.9.2 The City shall have the right to revoke a Franchise and the Franchise Agreement for a Franchisee's failure to construct, operate or maintain a Cable or OVS System as required by a Franchise Agreement or this Ordinance; for defrauding or attempting to defraud the City or Subscribers; or for any other material breach or violation of a Franchise or of this Ordinance.

8.9.3 To invoke the provisions of this Section, the City shall give a Franchisee written notice of the default in its performance. If within ninety (90) calendar days following such written notice from the City to a Franchisee, or such other period as a Franchisee and the City shall agree, a Franchisee has not taken corrective action to the satisfaction of the City, the City may give written notice to a Franchisee of its intent to revoke a Franchise and the Franchise Agreement, stating its reasons.

8.9.4 Prior to revoking a Franchise, the City shall hold a public hearing, upon thirty (30) calendar days advance notice to the public and by certified mail to a Franchisee, at which time a Franchisee and the public shall be given an opportunity to be heard. Following the public hearing, the City may determine whether to revoke a

Franchise and a Franchise Agreement based on the information presented at the hearing, and other information of record, or, where applicable, grant additional time to a Franchisee to affect any cure. If the City determines to revoke a Franchise and the Franchise Agreement, it shall issue a written decision setting forth the reasons for its decision. A copy of such decision shall be transmitted to a Franchisee.

8.9.5 If the City revokes a Franchise and the Franchise Agreement, or if for any reason a Franchisee abandons, terminates, or fails to operate or maintain service to its Subscribers, the following procedures and rights are effective.

8.9.5(1) The City may require the former Franchisee to remove its above-ground facilities and equipment at the former Franchisee's expense and restore affected sites or permit the former Franchisee to abandon such facilities in place. If the former Franchisee fails to do so within a reasonable period of time, the City may have the removal done at the former Franchisee's and/or surety's expense.

8.9.5(2) The City may require the former Franchisee to continue operating the Cable or OVS System.

8.9.5(3) If a Cable or OVS System is abandoned by a Franchisee, the ownership of all portions of the Cable or OVS System in Public Rights-of-Way shall revert to the City and the City may sell, assign, or transfer all or part of the assets of the System.

8.9.6 Notwithstanding the foregoing, a Franchisee may appeal a revocation decision by the City to a court of competent jurisdiction and such appeal shall stay the implementation of such revocation if a stay or injunction is obtained from the court.

SECTION 9: SEVERABILITY

If any provision of this Ordinance is held by any court or by any federal or state agency of competent jurisdiction to be invalid as conflicting with any federal or state law, rule, or regulation now or hereafter in effect, or is held by such court or agency to be modified in any way in order to conform to the requirements of any such law, rule, or regulation, such provision will be considered a separate, distinct, and independent part of this Ordinance, and such holding will not affect the validity and enforceability of all other provisions hereof. In the event that such law, rule, or regulation is subsequently repealed, rescinded, amended, or otherwise changed, so that the provision hereof which had been held invalid or modified is no longer in conflict with such law, rule, or regulation, said provision will thereupon return to full force and effect and will thereafter be binding on City and Franchisee, provided that City will give Franchisee 30 days written notice of such change before requiring compliance with said provision or such longer period of time as may be reasonably required for Franchisee to comply with such provision.

SECTION 10: BANKRUPTCY, RECEIVERSHIP AND FORECLOSURE

10.1 Consistent with federal law, the filing of a bankruptcy petition alone shall not constitute a material default of this Ordinance or a Franchise Agreement provided, however, and subject to applicable federal law, in the event of a bankruptcy or other insolvency proceeding, and the City retains all existing rights and enforcement authority under this Ordinance or a Franchise Agreement and its general police powers.

10.2 Subject to applicable federal law, any trustee or receiver of a Franchisee shall be required to assume responsibility for, and remedy all existing defaults and provide adequate assurance of future performance under this Ordinance and a Franchise Agreement during the pendency of such bankruptcy or insolvency proceeding.

10.3 Subject to applicable federal law, in the event a foreclosure or other judicial sale of a Franchisee's plant, equipment, or other property comprising the System, or any material part thereof, such event shall, at the option of the City, constitute a material breach of this Ordinance and a Franchise Agreement, unless the entity acquiring the property gives adequate assurance of future performance and that it will remedy all past defaults of a Franchise Agreement.

SECTION 11: ADMINISTRATION OF FRANCHISE

The City shall be responsible for the continued administration of this Code and any Franchises granted hereunder. The City may delegate this authority from time to time in any manner consistent with applicable law, provided, however, that the City shall not delegate enforcement authority.

SECTION 12: EFFECTIVE DATE, PUBLICATION, ACCEPTANCE AND GOVERNING LAW

12.1 Publication: Effective Date.

12.1.1 A Franchise shall be signed by the Mayor and attested by the City Administrator/Clerk-Treasurer. A Franchise Agreement shall be published in accordance with the requirements of City and state law and shall take effect upon acceptance by a Franchisee, and in accordance with the requirements as provided for in Section 12.2 of this Ordinance, the Effective Date.

12.2 Acceptance and Governing Law.

12.2.1 A Franchisee shall have thirty (30) days from the date of adoption of a Franchise to accept a Franchise in a written form approved by the City Attorney which shall include Franchisee acceptance of this Ordinance and the Franchise, its authority to do business in Minnesota, a representation of its legal, technical, and financial qualifications to fully perform the obligations of this Ordinance and a Franchise, and the representations required in Section 5.2.2 of this Ordinance. Such acceptance by Franchisee shall be deemed the grant of a Franchise for all purposes. Franchisee shall also deliver a

Guarantee, if required by the City, when granting the Franchise, within the same time as delivery of the acceptance, in a form acceptable to the City Attorney. In the event acceptance does not take place within thirty (30) days or such other time as the City might allow, a Franchise shall be null and void.

12.2.2 Upon acceptance of a Franchise, Franchisee shall be bound by all the terms and conditions contained in this Ordinance and in a Franchise. Franchisee shall provide all services and offerings specifically set forth in this Ordinance and in a Franchise, to provide cable services within the City.

12.2.3 With its acceptance, Franchisee shall also deliver to the City a certified resolution evidencing a Franchisee’s power and authority to accept a Franchise. Such documents shall also describe the officers authorized to accept on behalf of Franchisee.

12.2.4 With its acceptance, Franchisee shall also deliver any security deposit, insurance certificate, and performance bonds required by this Ordinance and a Franchise.

12.2.5 This Ordinance and a Franchise granted pursuant to it and every question arising thereunder shall be construed or determined according to the laws of the State of Minnesota and applicable federal law.

Adopted this 1st day of December, 2015 and effective December 1, 2015.

Voting Aye: Tweten, Olstad, Grassel, DeMers, Vetter, and Pokrzywinski.

Voting Nay: None.

Absent: Buckalew.

Attest:

Council President

By _____
Mayor Lynn Stauss

Approved as to Form:

Approved as to Form:

City Attorney Ronald I. Galstad

City Administrator David Murphy

EXHIBIT A



DATE:
TO: EAST GRAND FORKS, MN
FROM: Midcontinent Communications
 Accounts Payable
RE: FRANCHISE FEE
 Payment calculation using (Month) rev

Franchise fees payable for the current month were calculated using current month revenue numbers net of bad debt as follows:

<u>REVENUE TYPE</u>	<u>*REVENUE</u>	<u>BASE RATE</u>	<u>FRANCHISE FEE</u>
<i>BASIC</i>	\$	5.00%	\$
<i>PREMIUM</i>	\$	5.00%	\$
<i>OTHER</i>	\$	5.00%	\$
<i>LOCAL GOV'T FEES</i>			
Total	<u>\$</u>		<u>\$</u>

Payment is attached. If you have any questions or concerns, please contact Accounts Payable at (605) 357-5739.

Thanks,

Midcontinent Communications

EAS004

Exhibit B

PUBLIC AND SCHOOL BUILDINGS

NOTE: The City may add other City buildings in the future that are within two hundred (200) feet of the System, without cost provided that no commercial user or uses of said City buildings shall be entitled to free service or installation of any kind.

<u>Schools</u>		<u>Public Buildings</u>	
Senior High School	C	East Grand Forks Fire Station #1	C
Central Middle School	C	East Grand Forks Fire Station #2	C
New Heights Elementary	C	Parks Maintenance	C
South Point Elementary	C	East Grand Forks City Hall	C
RR Valley High School Coop	C	East Grand Forks Police Department	C
Sacred Heart Grade School	C	Civic Center	C
Sacred Heart High School	C	VFW Arena	C
Riverside Christian School	C	Library	C

C = Classic Cable Only