

## **ORDINANCE NO. 236**

AN ORDINANCE GRANTING A FRANCHISE TO CMN-RUS, INC. (“METRONET”) TO CONSTRUCT, OPERATE, AND MAINTAIN A CABLE SYSTEM IN THE CITY OF HENDERSON, MINNESOTA; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM; AND PRESCRIBING PENALTIES FOR THE VIOLATION OF ITS PROVISIONS.

The City Council of the City of Henderson ordains.

### **STATEMENT OF INTENT AND PURPOSES**

The City of Henderson intends, by the adoption of this Franchise, to provide for the operation and development of a MetroNet Cable System, and the improvement and enhancement of it. Such a development can contribute significantly to the communications' needs and desires of the residents and citizens of the City and the public generally. Further, City may achieve better utilization and improvement of public services and enhanced economic development with the development and operation of the Cable System.

### **FINDINGS**

The City Council makes the following findings:

1. The Franchise granted to Grantee by City complies with the existing applicable City Code, State statutes, federal laws and regulations; and
2. The Franchise granted to Grantee is nonexclusive.

### **SECTION 1**

#### **SHORT TITLE AND DEFINITIONS**

1. Short Title. This Franchise shall be known and cited as the Cable Television Franchise Ordinance.

2. Definitions. For purposes of this Franchise, the following terms, phrases, words and their derivations shall 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. All capitalized terms used in the definition of any other term shall have their meaning as otherwise defined in this section. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

- a. “Actual Cost” means Grantee's cost without any increase due to overhead, interest, profit or administrative expense.

b. “Applicable Laws” means any local law, or federal or State statute, law, regulation or other final legal authority governing any of the matters addressed in this Franchise.

c. “Basic Cable Service” means any service tier which includes the lawful retransmission of local television broadcast signals. Basic Cable Service as defined herein shall not be inconsistent with 47 U.S.C. § 543(b)(7)(1993).

d. “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. 104458 and as the same may, from time to time, be amended.

e. “Cable Service” or “Service” means:

i. The one-way transmission to Subscribers of (1) video programming, or (2) other programming service; and

ii. Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

This definition shall not include information services as defined in federal law as may be amended from time-to-time, telephone services regulated pursuant to Minn. Stat § 237.01 et seq., and telecommunications services as defined in federal law as may be amended from time to time.

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

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

ii. A facility that serves Subscribers without using any public rights-of-way;

iii. A facility of a common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. §§ 201-226, except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541) to the extent such facility is used in the transmission of video programming directly to Subscribers; unless the extent of such use is solely to provide interactive on-demand services;

iv. An open video system that complies with Section 653 of the Cable Act;

v. Any facilities of any electric utility used solely for operating its electric utility system; or

vi. Any facilities used for information or telecommunications services

g. “Channel” or “Cable Channel” means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television Channel as defined by the Federal Communications Commission.

- h. “City” means the City of Henderson, Minnesota as represented by the Council or any official delegate of the Council acting within the scope of its jurisdiction.
- i. “Construction Agreement” means any express agreement between a City and Grantee regarding the construction and operation of Grantee’s FTTP Network.
- j. “Council” means the City Council of the City of Henderson, Minnesota.
- k. “Drop” means the cable that connects the ground block on the Subscriber’s residence to the Node or the Tap on the nearest Feeder Cable of the System.
- l. “Dwelling Unit” means any residential home or business capable of receiving Grantee’s Cable Service without the need to obtain any private property rights from a third party or that has access to Cable Service through a fiber-to-the-premises network.
- m. “FCC” means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.
- n. “Feeder Cable” means coaxial cables that run along Streets within the served area and connects between the individual Taps which serve the Drops.
- o. “Force Majeure Event” means any event or circumstance beyond the reasonable control of the party claiming the existence of such force majeure event, including but not limited to any pandemic, disease earthquake, hurricane, tornado or similar weather, fire, flood, lightning, sinkhole or other forces of nature, act of war, terrorism or civil unrest, strikes, lockout or other labor unrest, legal order, government action or application of laws, regulations or codes.
- p. “Franchise” means this Franchise and the regulatory and contractual relationship established hereby.
- q. “Franchise Fee” means any tax, fee or assessment of any kind imposed by the City or any other Governmental Authority on a Grantee or cable Subscriber, or both, solely because of their status as such. 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 services but not including a tax, fee, or assessment which is unduly discriminatory against cable operators or cable Subscribers); (ii) capital costs which are required by the Franchise to be incurred by the Grantee for PEG Access Facilities; (iii) requirements or charges incidental to the awarding or enforcing of the 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.
- r. “FTTP Network” means fiber-to-the-premises network.
- s. “GAAP” means generally accepted accounting principles as promulgated and defined by the Financial Accounting Standards Board (“FASB”), Emerging Issues Task Force (“EITF”) and/or the U.S. Securities and Exchange Commission (“SEC”).
- t. “Governmental Authority” means any court or other federal, State, county, municipal or other governmental department, commission, board, agency or instrumentality.
- u. “Grantee” is CMN-RUS, Inc., its agents and employees, lawful successors, transferees or assignees.

v. “Gross Revenues” means any and all revenues received by the Grantee from or in connection with the operation of the Cable System to provide Cable Services in the Service Area. Gross Revenues shall include, by way of example but not limitation, revenues from Basic Cable Service, all Cable Service fees, premium, pay-per-view, Pay Television, late fees, guides, home shopping revenue, Installation and reconnection fees, upgrade and downgrade fees, advertising revenue, Converter rental fees and Lockout Device fees. Gross Revenue shall not include fees for the sale, leasing or servicing of equipment, network capacity and facilities rent for the provision of non-cable services (voice or data services), any fees itemized and passed through as a result of Franchise imposed requirements, tower rent, refundable deposits, bad debt, investment income, or any taxes, fees or assessments of general applicability imposed or assessed by any Governmental Authority. A Franchise Fee is not such a tax, fee or assessment. Gross Revenues shall not include any PEG Fees billed to or collected from Subscribers. The City acknowledges and accepts that Grantee shall maintain its books and records in accordance with GAAP.

w. “Headend” means the point of origination and processing for most of the signals received by the Cable System from external content providers.

x. “Grantee Service Area” means that portion of the Service Area where Grantee deploys Cable Service which shall initially include at least ninety percent (90%) of the Dwelling Units.

y. “Installation” means the connection of the System from Feeder Cable to the point of connectivity.

z. “Node” means a device that consists of receivers and transmitters that amplify signals as they travel away from the Headend and receive upstream signals from connected coaxial legs.

aa. “Non-Standard Installation” means any Drop in excess of Two Hundred (200) feet for a residential property.

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

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

dd. “PEG” means public, educational and governmental.

ee. “Person” means any individual or any association, firm, general partnership, limited partnership, joint stock company, joint venture, trust, corporation, limited liability company or other legally recognized entity, private or public, whether for-profit or not-for-profit.

ff. “Public, Educational or Government Access Facilities” or “PEG Access Facilities” means:

i. Channel capacity designated for public, educational or governmental use;  
and

ii. Facilities and equipment for the use of such Channel capacity.

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

hh. “Service Interruption” means the loss of picture or sound on one (1) or more Cable Channels.

ii. “Standard Installation” means the first Two Hundred (200) feet of a residential Drop.

jj. “State” means the State of Minnesota.

kk. “Street” means any street, alley, other land or waterway, dedicated or commonly used for utility purposes, including general or utility easements in which the City has the right and authority to authorize, regulate or permit the location of facilities other than those of the City. “Street” shall not include any real or personal City property that is not specifically described in the previous sentence and shall not include City buildings, fixtures and other structures or improvements, regardless of whether they are situated in the public right-of-way.

ll. “Subscriber” means any Person who lawfully elects to subscribe to Cable Service via the System. In the case of multiple office buildings or multiple dwelling units, the “Subscriber” means the lessee, tenant or occupant.

mm. “Tap” means a device which connects a Drop to the Feeder Cable.

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

3. Written Notice. All notices, reports or demands required or permitted to be given under this Franchise shall be in writing and shall be deemed to be given when delivered personally to the party designated below, or when five (5) days have elapsed after it has been deposited in the United States mail in a sealed envelope, with registered or certified mail, postage prepaid thereon, or on the next business day if sent by express mail or nationally recognized overnight air courier addressed to the party to which notice, report or demand is being given, as follows:

If to City: City of Henderson, MN  
Attn: City Manager  
  
600 Main St, P.O. Box 433  
  
Henderson, MN 56044

Copy to: City of Henderson, MN  
  
Attn: Jason Moran, City Attorney  
  
65 South Park Ave.

P.O. Box 156  
Le Center, MN 56057

If to Grantee: CMN-RUS, Inc.  
Attn: Legal Department  
8837 Bond Street  
Overland Park, KS 66214

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

## SECTION 2

### GRANT OF AUTHORITY

1. Franchise Required. It shall be unlawful for any Person, unless specifically required by Applicable Laws, to construct, install, operate or maintain a Cable System or to offer Cable Service in the City, unless such Person or the Person for whom such action is being taken shall have first obtained and shall currently hold a valid franchise.

2. Grant of Franchise. This nonexclusive Franchise is granted pursuant to the terms and conditions contained herein. The City hereby authorizes Grantee to occupy or use the City's Streets subject to: (a) the provisions of this non-exclusive Franchise to provide Cable Service within the City; (b) all applicable provisions of the City Code; and (c) any Construction Agreement. Nothing in this Franchise shall be construed to prohibit Grantee from: (i) providing services other than Cable Services to the extent not prohibited by Applicable Law; or (ii) challenging any exercise of the City's legislative or regulatory authority or action in an appropriate forum. The City hereby reserves all of its rights to regulate such other services to the extent not prohibited by Applicable Law and no provision herein shall be construed to limit or give up any right to regulate.

3. Grant of Nonexclusive Authority/Competitive Equity.

a. The Franchise granted herein shall be nonexclusive. The City specifically reserves the right to grant, at any time, such additional franchises for a Cable System as it deems appropriate provided, however, such additional grants shall not operate to materially modify, revoke, or terminate any rights previously granted to Grantee other than as described herein. If any other Wireline MVPD enters into any agreement with the City to provide multi-channel video programming or its equivalent to residents in the City, the City, upon written request of the Grantee, shall permit the Grantee to construct and/or operate its Cable System and provide multi-channel video programming or its equivalent to Subscribers in the City under the same material terms as applicable to the new MVPD with the goal of competitive equity, taking into consideration the City's capital contribution towards System extension as set forth in Section 3 of this Franchise. Within one hundred eighty (180) days after the Grantee submits a written request

to the City, the Grantee and the City shall enter into an agreement or other appropriate authorization (if necessary) containing any modified terms and conditions to this Franchise. In no event shall this provision be used by Grantee to avoid the System extension obligations or Performance Bond obligations contained in this Franchise.

b. The Cable System constructed and maintained by Grantee or its agents shall not interfere with other uses of Streets. Grantee shall make use of existing poles and other facilities available to Grantee to the extent commercially reasonable. Nothing in this section authorizes the Grantee to construct poles in the City without prior City consent consistent with the City Code and any Construction Agreement.

c. Notwithstanding the above grant to use Streets, no Street shall be used by Grantee if City, in its sole opinion, determines that such use is inconsistent with the terms, conditions, or provisions by which such Street was created or dedicated, or with the present use of the Street.

d. Grantee shall have the authority to use Streets for the distribution of Grantee's System. The City may require all developers of future subdivisions to allow and accommodate the construction of the System as part of any provisions for utilities to serve such subdivisions.

e. The Grantee specifically agrees to comply with the lawful provisions of the City Code and applicable regulations of the City. Subject to the police power exception below, in the event of a conflict between (i) the lawful provisions of a Construction Agreement, a City Code or applicable regulations of the City and (ii) this Franchise, the express provisions of the Construction Agreement or City Code shall govern. Subject to express federal and state preemption, the material terms and conditions contained in this Franchise may not be unilaterally altered by the City through subsequent amendments to the City Code, ordinances or any regulation of City, except in the lawful exercise of City's police power. Grantee acknowledges that the City may modify its regulatory policies by lawful exercise of the City's police powers throughout the term of this Franchise. Grantee agrees to comply with such lawful modifications to the City Code; however, Grantee reserves any rights it may have to challenge such modifications to the City Code whether arising in contract or at law. The City reserves all of its rights and defenses to such challenges whether arising in contract or at law.

f. Nothing in this Franchise shall (i) abrogate the right of the City to perform any public works or public improvements of any description, (ii) be construed as a waiver of any codes or ordinances promulgated by the City, or (iii) be construed as a waiver or release of the rights of the City in and to the Streets.

g. This Franchise complies with the Minnesota franchise standards set forth in Minnesota Statutes Section 238.084. The City and the Grantee shall conform to Minnesota laws promulgated subsequent to the date of this Franchise. The City and the Grantee shall conform to federal laws and regulations as they become effective.

4. Term. The term of this Franchise shall be for the period of ten (10) years from the date of acceptance by Grantee, unless renewed, revoked or, terminated sooner as herein provided ("Initial Term").

5. Ownership of Grantee. Grantee represents and warrants to City that the corporate structure of the Grantee, including all affiliated companies and ultimate parent company, are as set forth in the organizational chart attached hereto as Exhibit A.

6. Rules of Grantee. The Grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably

necessary; provided that such rules, regulations, terms and conditions shall not be in conflict with Applicable Law.

### SECTION 3

#### CONSTRUCTION STANDARDS

1. Territorial Area Involved. This Franchise is granted for the Service Area.
2. Construction Standards. If the System, or subsequent rebuilds or extensions, proposed for the Service Area shall be completed subject to the requirements of this Franchise.
3. Service to Residences.
  - a. Grantee shall provide Cable Service to any requesting Subscriber within the Initial Service Area that requires a Standard Installation within thirty (30) days from the date of request, provided that the Grantee is able to secure access to all rights-of-way and private property rights necessary to extend Service to such Subscriber on reasonable terms and conditions.
  - b. If a Subscriber requires a non-Standard Installation (*e.g.* a Drop in excess of 200 feet), Grantee shall, upon request, provide a quote for construction of the non-Standard Installation and shall establish a mutually acceptable payment schedule not to exceed one (1) calendar year. For residential Installations only, Grantee shall be responsible for all costs of the Standard Installation and the Subscriber shall be responsible for the Actual Cost of any construction required beyond the cost of the Standard Installation.
  - c. Grantee shall promptly bury all Drops to Subscribers' dwellings and restore the property to its original condition. In the event the ground is frozen or otherwise unsuitable to permit immediate burial, Grantee shall be permitted to delay such burial until the ground becomes suitable for burial and shall complete said burial no later than June 1<sup>st</sup> of each year.
  - d. Grantee shall ensure that all Installations and Drops are properly grounded and that the Cable System meets or exceeds the requirements of the most current editions of the National Electrical Code (NFRA 70) and the National Electrical Safety Code (ANSI C2) as applicable to a passive optical FTTP Network.
4. Permits. Grantee shall not construct any Cable System facilities until Grantee has secured the necessary permits from the City. There are no fees (or any other costs) owed in connection with (a) the submission of a permit application or (b) the issuance of a permit.
5. City Code. City Code Grantee shall comply with all relevant City Codes in the course of fulfilling its obligations under this Franchise.
6. Grantee's Facilities and Equipment.
  - a. In those areas of the City where transmission or distribution facilities of all or a majority of the public utilities providing telephone and electric power service are underground, the Grantee likewise shall construct, operate and maintain its System underground.
  - b. Grantee shall be granted access to any easements granted to a public utility, municipal utility or utility district in any areas annexed by City or new developments.



c. In those areas of the City where Grantee's cables are located on the aboveground transmission or distribution facilities of the utility providing telephone or electric power service, and in the event that the facilities of both such utilities subsequently are placed underground, then the Grantee likewise shall remove its overhead facilities from any affected poles and construct, operate and maintain its transmission and distribution facilities underground, at Grantee's cost.

d. Certain of Grantee's equipment, such as pedestals, amplifiers and power supplies (but not antennae), which normally are placed above ground, may continue to remain in above-ground enclosures, however, the City specifically reserves all of its rights to approve above-ground or underground locations for pedestals subject to Applicable Laws.

e. Grantee shall comply with Minnesota Statutes §216D (the Gopher State One Call process).

7. New Residential Developments. In those portions of the Grantee Service Area with new residential developments in which all the electric power and telephone utilities are underground, the City may, in its sole discretion, require that the following procedure apply with respect to access to and utilization of underground easements:

a. The developer shall be responsible for contacting Grantee to provide Cable Service to that development.

b. The developer shall accommodate all Wireline MVPD's in the joint utilities trench on the same terms and conditions.

c. Grantee will install infrastructure in all new developments planned by the City, however, said infrastructure may be limited to a conduit only system. Grantee reserves the right to participate in the common trench or to dig its own trench.

d. The developer shall provide at least ten (10) business days' notice of the date that utility trenches will be open to Grantee. Grantee shall not be required to use utility trenches provided by a developer and reserves the right to install its System in a separate trench at its own expense, subject to its compliance with applicable permitting requirements.

Developer shall submit evidence to City that:

i. It has notified Grantee that underground utility trenches are to be open as of an estimated date, and that Grantee is allowed access to such trenches, including trenches from proposed Streets to individual homes or home sites, on the same terms and conditions as other Wireline MVPD's; and

ii. It has received a written notification from Grantee that Grantee intends to install its facilities during the open trench period on the specified terms and conditions, or such other terms and conditions as are mutually agreeable to the developer and Grantee.

8. Use of Streets and Property. Any and all Streets or public property or private property, which are disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance or reconstruction of the System shall be promptly and fully restored by Grantee, at its expense, pursuant to the terms of the Construction Agreement. If Grantee shall fail to promptly perform the restoration required herein, City shall have the right, subject to Applicable Law, to put the Streets, public, or private property back into good condition. City reserves its rights to pursue reimbursement for such restoration from Grantee in accordance with Applicable Law and the terms of this Franchise.

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

b. Upon Request, the Grantee shall furnish to and file with City Manager strand maps of the System, including the location of underground facilities. City shall have right to travel to Grantee's office, within reasonable proximity of the City, to review an as-built map in accordance with Section 7(3) of this Franchise.

c. If at any time during the period of this Franchise, the City shall elect to alter, or change the grade or location of any Street, alley or other public way, the Grantee shall, at its own expense, upon reasonable notice by City, remove and relocate its poles, wires, cables, conduits, manholes and other fixtures of the System, and in each instance comply with the standards and specifications of City. If City reimburses other occupants of the Street, Grantee shall be likewise reimbursed.

d. The Grantee shall, on request of any Person holding a moving permit issued by City, temporarily move its wires or fixtures to permit the moving of buildings with the expense of such temporary removal to be paid by the Person requesting the same, and the Grantee shall be given not less than ten (10) days advance notice to arrange for such temporary changes.

9. Tree Trimming. Grantee shall have the authority to trim trees, in accordance with all applicable utility restrictions, ordinance and easement restrictions, upon and hanging over Streets and public places of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of Grantee. City representatives shall have authority to supervise and approve all trimming of trees conducted by Grantee. Grantee will contact the owners of private easements prior to engaging in the trimming of trees or shrubs adjacent to Grantee's System. Grantee will make reasonable accommodations with and for the property owner to ensure Grantee's System and cable plant is safe and secure as well as that the property owner's trees and shrubs are trimmed in accordance with established standards of the National Arborist Association.

10. Protection of facilities. Nothing contained in this section shall relieve any Person from liability arising out of the failure to exercise reasonable care to avoid damaging Grantee's facilities while performing any work connected with grading, regrading or changing the line of any Rights-of-Way or public place or the construction or reconstruction of any sewer or water system.

## SECTION 4

### DESIGN PROVISION

1. Minimum Channel Capacity.

a. Grantee shall develop, construct, and operate an FTTP Network which shall be capable of delivering a minimum of eighty (80) video program Channels

b. All programming decisions remain the sole discretion of Grantee subject to City's rights pursuant to 47 U.S.C. § 545.

2. Technical Standards. The System shall at all times meet or exceed the technical standards applicable to FTTP Networks as established by the FCC as they may be amended from time to time and shall be operated so as to minimize disruption of signal to Subscribers.

## SECTION 5

### SERVICE PROVISIONS

1. Rate Regulation. The City reserves the right to regulate rates for Basic Cable Service and any other services offered over the Cable System, to the extent not prohibited by Applicable Laws.
2. Consumer Protection and Customer Service Standards. Grantee shall comply with the consumer protection standards attached hereto as Exhibit B under Normal Operating Conditions.

## SECTION 6

### PUBLIC ACCESS PROVISIONS

1. Public, Educational and Government Access. City or its designee is hereby designated to operate, administer, promote, and manage public, educational, and governmental programming (hereinafter "PEG Access") for the Cable System established pursuant to this Section 6. Grantee shall have no responsibility whatsoever for PEG Access except as expressly stated in this Section 6.
2. Grantee Support for PEG Usage. In accordance with the provisions of the Cable Act and Minnesota Statutes Section 238.084, Grantee shall provide and make available for PEG Access usage within the Service Area in accordance with Exhibit C hereto.
3. PEG Access Facilities shall be operated by the City.

## SECTION 7

### OPERATION AND ADMINISTRATION PROVISIONS

1. Franchise Fee.
  - a. During the term of the Franchise, Grantee shall pay quarterly to the City a Franchise Fee of five percent (5%) of Gross Revenues or a lower percentage amount as established by the City Council from time to time. Grantee and City may mutually agree to increase the Franchise Fee subject to Applicable Law. In the event Grantee bundles or combines Cable Services (which are subject to the Franchise Fee) with non-Cable Services (which are not subject to the Franchise Fee) so that Subscribers pay a single fee for more than one (1) class of service resulting in a discount on Cable Services, Grantee agrees that for the purpose of calculation of the Franchise Fee, it shall allocate to Cable Service revenue no less than a pro rata share of the revenue received for the bundled or combined services. The pro rata share shall be computed on the basis of the published charge for each service in the bundled or combined classes of services when purchased separately.
  - b. Each Franchise Fee payment shall be paid quarterly not later than thirty (30) days following the end of a given quarter and each payment shall be accompanied by the Franchise Fee Payment Worksheet in the form attached hereto as Exhibit E.
  - c. Except as otherwise provided by law, no acceptance of any payment by the City shall be construed as a release or as an accord and satisfaction of any claim the City may have for further or additional sums payable as a Franchise Fee under this Franchise or for the performance of any other obligation of the Grantee.

d. Any Franchise Fees owing pursuant to this Franchise which remain unpaid more than thirty (30) days after the end of a given quarter shall be delinquent and shall immediately thereafter accrue simple interest at twelve percent (12%) per annum. Enforcement of unpaid Franchise Fees shall be handled in accordance with Section 9(7), however, Grantee shall in all cases be subject to interest on any payment more than thirty (30) days after the end of a given quarter.

e. Upon ten (10) days prior written notice, City shall have the right to conduct an independent audit of Grantee's records. If such audit indicates a Franchise Fee underpayment of five percent (5%) or more of the Franchise Fee due, the Grantee shall assume all of City's out-of-pocket costs associated with the conduct of such an audit. Grantee shall remit to City all applicable Franchise Fees and PEG fees due and payable together with all accrued interest as set forth in paragraph 7(1)(d) above within 30 days of receiving the audit statement.

f. Grantee acknowledges and agrees that the Franchise Fees payable by Grantee to City pursuant to this section shall take precedence over all other material provisions of the Franchise and shall not be deemed to be in the nature of a tax, and shall be in addition to any and all taxes of general applicability and other fees and charges which do not fall within the definition of a Franchise Fee under 47 U.S.C. § 542.

g. Grantee shall not apply or seek to apply all or any part of any taxes, fees or assessments of general applicability levied or imposed by the City or (including any such tax, fee or assessment imposed on both utilities and cable operators or their services) that do not fall within the definition of a Franchise Fee under 47 U.S.C. § 542 as a deduction or other credit from or against any of the Franchise Fees or other payments or contributions to be paid or made by Grantee to City pursuant to this Franchise which shall be deemed to be separate and distinct obligations of Grantee.

2. Periodic Evaluation, Review and Modification. City and Grantee acknowledge and agree that the field of cable television is rapidly changing and one which may see many regulatory, technical, financial, marketing and legal changes during the term of this Franchise. Therefore, in order to provide for the maximum degree of flexibility in this Franchise, and to help achieve an advanced and modern Cable System, the following evaluation provisions will apply:

a. The City reserves the right to adopt rules and regulations controlling the procedures as set forth below and the subjects for evaluation sessions. In the absence of any City action taken to exercise these rights, Grantee shall be subject to the procedures and the subjects described in this Section.

b. The City may require, in its sole discretion, that the Grantee participate in evaluation sessions with the City at any time and from time to time during the term of this Franchise; provided, however, there shall not be more than one (1) evaluation session in any three (3) year period during the Term. However, nothing shall prohibit Grantee and City from mutually agreeing to have informal reviews as requested or deemed advisable by either party.

c. Topics which may be discussed at any evaluation session include, but are not limited to, rates, Channel capacity, the System performance, programming, PEG Access, municipal uses of the System, Subscriber complaints, judicial rulings, FCC rulings and any other topics the City or Grantee may deem relevant.

d. As a result of an evaluation session, the City or Grantee may determine that an amendment in the terms of this Franchise may be required, that the requirements of the System or this Franchise should be updated, changed or revised, and/or that additional services should be provided by Grantee (collectively a "Proposed Modification"). If the Proposed Modification is

consistent with the terms of this Franchise, the needs of the City and existing state-of-the-art technology, including what is provided by Grantee in other systems owned, operated or managed by it, its parent company or any affiliated company, Grantee and the City will, in good faith, review the terms of the Proposed Modification and consider amending this Franchise according to Section 10(2) herein.

3. Records Required and City's Right to Inspect.

a. Grantee shall at all times maintain, at its sole cost and expense, the following records and information relating specifically to the Cable System serving the Grantee Service Area — the City may review these records upon request:

i. A full and complete set of plans, records and "as-built" drawings and/or maps which shall be updated annually showing the location of the Cable System installed or in use in the City, exclusive of Subscriber service Drops and equipment provided in Subscribers' homes.

ii. A summary of trouble calls or complaints, identifying the number, general nature and disposition of such calls, on a monthly basis. A summary of such service calls shall be submitted to the City within thirty (30) days following its request in a form reasonably acceptable to the City.

4. Audits. Upon reasonable notice and during Normal Business Hours, Grantee shall permit examination by any duly authorized representative of the City of all Franchise property and facilities, together with any appurtenant property and facilities of Grantee situated within or without the City, and those records relating to this Franchise, that enable the City to carry out its regulatory responsibilities under Applicable Laws and this Franchise. Grantee shall have the right to be present at any such examination.

5. Reports. All reports required under this Franchise shall be furnished at the sole expense of Grantee.

a. During the first three (3) years following the Effective Date of this Franchise, upon request Grantee shall provide City with a quarterly report evidencing the progress of System construction and extension within the Grantee Service Area.

b. Grantee shall provide City with an annual statement, within ninety (90) days of the close of each calendar year end, certified by Grantee's controller or chief financial officer, reflecting the total amounts of Gross Revenues and all payments and computations of the Franchise Fee and the PEG Fee for the previous calendar year.

6. Duty to Cooperate. Each of Grantee and City shall use its commercially reasonable efforts to communicate and promptly and in good faith resolve any issues that may arise pursuant to this Franchise.

## SECTION 8

### GENERAL FINANCIAL AND INSURANCE PROVISIONS

1. Liquidated Damages.

a. In addition to recovery of any monies owed by Grantee to City or damages to City as a result of any acts or omissions by Grantee pursuant to the Franchise, City in its sole discretion may access the following mutually agreed upon liquidated damages:

i. For substantial failure to comply with any of the material provisions of this Franchise, or other City ordinance related to Franchise operations for which a penalty is not otherwise specifically provided pursuant to this subparagraph, the penalty shall be One Hundred Fifty and No/100 Dollars (\$150) per day for each day, or part thereof, such failure occurs or continues, with a maximum of Ten Thousand and No/100 Dollars (\$10,000).

b. Each violation of any provision of this Franchise shall be considered a separate violation for which a separate penalty can be imposed.

c. Whenever City finds that Grantee has violated one (1) or more terms, conditions or provisions of this Franchise, a written notice shall be given to Grantee, specifying with particularity the alleged violation. At any time after thirty (30) days (or such additional reasonable time which is necessary to cure the alleged violation) following local receipt of notice, provided Grantee remains in violation of one (1) or more material terms, conditions or provisions of this Franchise, City may draw from the Security Fund all penalties and other monies due City from the date of the local receipt of notice.

d. Whenever notice of an alleged violation has been received by Grantee, Grantee may, within thirty (30) days of local receipt of notice, notify City that there is a dispute as to whether a violation or failure has, in fact, occurred. Such notice by Grantee to City shall toll the running of the time frames for cure and the accrual of any penalties herein and shall specify with particularity the matters disputed by Grantee. City shall hear Grantee's dispute at its next regularly scheduled Council meeting or as soon thereafter as possible pursuant to this Section 8(1). In no event shall City delay hearing Grantee's dispute for more than ninety (90) days from receipt of Grantee's notice. Grantee shall be afforded a reasonable notice of the meeting and afforded a reasonable opportunity to participate in and be heard at the meeting. City shall supplement its decision with a written order sustaining or overruling the decision, and shall specify with particularity the factual and legal basis for its decision.

e. Upon determination by City that no violation has taken place, City shall withdraw the notice alleging a violation. Upon determination that a violation has occurred, Grantee shall have thirty (30) days to cure said violation before penalties shall accrue.

f. Grantee shall have the right to challenge in a court of competent jurisdiction the City's findings that Grantee has violated one (1) or more terms, conditions or provisions of this Franchise or has failed to substantially cure such violation. A hearing under this section prohibits the accumulation of liquidated damages only until a court of competent jurisdiction renders a final decision

g. If the performance bond or any subsequent performance bond delivered pursuant thereto expires prior to the expiration of the Franchise, it shall be renewed or replaced during the term of this Franchise to provide that it will not expire earlier than the expiration of this Franchise. The renewed or replaced performance bond shall be for the full amount stated in paragraph (a) of this section.

h. If City draws upon the performance bond or any subsequent performance bond delivered pursuant hereto, in whole or in part, Grantee shall replenish or replace the same within fifteen (15) days and shall deliver to City a like replacement performance bond for the full amount stated in paragraph (a) of this section as a substitution of the previous security fund.

i. If any performance bond is not so replenished or replaced, City may draw on said performance bond for the whole amount thereof and hold the proceeds, without interest, and use the proceeds to pay costs incurred by City in performing and paying for any or all of the

obligations, duties and responsibilities of Grantee under this Franchise that are not performed or paid by Grantee pursuant hereof, including attorneys' fees incurred by the City in so performing and paying.

j. The collection by City of any damages, monies or penalties from the performance bond shall not affect any other right or remedy available to City, nor shall any act, or failure to act, by City pursuant to the performance bond, be deemed a waiver of any right of City pursuant to this Franchise or otherwise.

## 2. Liability Insurance.

a. Grantee shall with its acceptance of this Franchise, and at its sole expense, take out and maintain during the term of this Franchise comprehensive general liability insurance with a company licensed to do business in the State of Minnesota with a rating by A.M. Best & Co. of not less than "A-" that shall protect the Grantee, the City and their officials, officers, directors, employees and agents from any and all claims which may arise from operations under this Franchise, whether such operations be by the Grantee, its officials, officers, directors, employees and agents or any subcontractors of Grantee. This liability insurance shall include, but shall not be limited to, protection against claims arising from bodily and personal injury and damage to property, resulting from Grantee's vehicles, products and operations. The amount of insurance for single limit coverage applying to bodily and personal injury and property damage shall not be less than Two Million Dollars (\$2,000,000.00).

b. The following endorsements shall be attached to the liability policy:

i. The policy shall provide coverage on an "occurrence" basis.

ii. The policy shall cover personal injury as well as bodily injury.

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

iv. Broad form property damage liability shall be afforded.

v. The City shall be named as an additional insured on all policies required under this Franchise.

vi. An endorsement shall be provided which states that the coverage is primary insurance and that no other insurance maintained by the City will be called upon to contribute to a loss under this coverage.

vii. Standard form of cross-liability shall be afforded.

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

ix. Grantee shall submit to City a certificate of insurance signed by the insurance agent and companies named.

x. All insurance shall be effective within thirty days after the Franchise is executed by Grantee and shall continue in full force and effect for the duration of the Franchise and per Section 9(3)(b) of the Franchise.

3. Workers' Compensation Insurance. Grantee shall obtain and maintain Workers' Compensation Insurance for all of Grantee's employees, and in case any work is sublet, Grantee shall require any subcontractor similarly to provide Workers' Compensation Insurance for all of their employees, all in compliance with State laws, and to fully indemnify the City from and against any and all claims arising out of occurrences on Grantee's work. Grantee hereby indemnifies City for any and all costs, expenses (including attorneys' fees and disbursements of counsel), damages and liabilities incurred by City as a result of any failure of either Grantee or any subcontractor of Grantee to take out and maintain such insurance. Grantee shall provide the City with a certificate of insurance indicating Workers' Compensation coverage upon its acceptance of this Franchise.

4. Indemnification.

a. Grantee shall indemnify, defend and hold City, its officers, boards, commissions, agents and employees (collectively the "Indemnified Parties") harmless from and against any and all third-party lawsuits, claims, causes of action, actions, liabilities, demands, damages, judgments, settlements, disability, losses, expenses and costs of any nature ("Claims") that any of the Indemnified Parties may at any time suffer, sustain or incur directly arising out of, based upon or directly connected with the grant of this Franchise, the operation of Grantee's System, the breach by Grantee of its obligations under this Franchise and/or the activities of Grantee, its subcontractor, employees and agents hereunder. Grantee shall be solely responsible for and shall indemnify, defend and hold the Indemnified Parties harmless from and against any and all matters relative to payment of Grantee's employees, including compliance with Social Security and withholdings.

b. The indemnification obligations of Grantee set forth in this Franchise are not limited in any way by the amount or type of damages or compensation payable by or for Grantee under Workers' Compensation, disability or other employee benefit acts, acceptance of insurance certificates required under this Franchise, or the terms, applicability or limitations of any insurance held by Grantee.

c. City does not, and shall not, waive any rights against Grantee which it may have by reason of the indemnification provided for in this Franchise, because of the acceptance by City, or the deposit with City by Grantee, of any of the insurance policies described in this Franchise.

d. The indemnification of City by Grantee provided for in this Franchise shall apply to all damages and claims for damages of any kind suffered by reason of any of the Grantee's operations referred to in this Franchise, regardless of whether or not such insurance policies shall have been determined to be applicable to any such damages or claims for damages.

e. Grantee shall not be required to indemnify City for Claims brought by the Lake Minnetonka Communications Commission ("LMCC") against the City, or negligence or misconduct on the part of City or its officials, boards, commissions, agents, or employees. City shall hold Grantee harmless, subject to the limitations in Minnesota Statutes Chapter 466, for any damage resulting from the negligence or misconduct of the City or its officials, boards, commissions, agents, or employees in utilizing any PEG Access Channels, equipment, or facilities and for any such negligence or misconduct by City in connection with work performed by City and permitted by this Franchise, on or adjacent to the Cable System.

## **SECTION 9**

### **SALE, ABANDONMENT, TRANSFER AND REVOCATION**



1. Franchise Non-transferable.

a. Grantee shall not voluntarily or involuntarily, by operation of law or otherwise, sell, assign, transfer, lease, sublet or otherwise dispose of the Franchise and/or Cable System or any of the rights or privileges granted by the Franchise, without the prior written consent of the Council, which consent shall not be unreasonably denied or delayed.

b. Without limiting the nature of the events requiring the Council's approval under this section, the following events shall be deemed to be a sale, assignment or other transfer of the Franchise and/or Cable System requiring compliance with this section: (i) the sale, assignment or other transfer of all or a majority of Grantee's assets or the assets comprising the Cable System to any Person; (ii) the merger of the Grantee with or into another Person (including the merger of Grantee with or into any parent or subsidiary corporation or other Person); (iii) the consolidation of the Grantee with any other Person; (iv) the sale, assignment or other transfer of capital stock or partnership, membership or other equity interests in Grantee by one or more of its existing shareholders, partners, members or other equity owners so as to create a new Controlling Interest in Grantee; and (v) the issuance of additional capital stock or partnership, membership or other equity interest by Grantee so as to create a new Controlling Interest in Grantee. The term "Controlling Interest" as used herein is not limited to majority equity ownership of the Grantee.

c. Grantee shall notify City in writing of any foreclosure or any other judicial sale of all or a substantial part of the property and assets comprising the Cable System of the Grantee or upon the termination of any lease or interest covering all or a substantial part of said property and assets.

d. For the purpose of determining whether it shall consent to such change, transfer or acquisition of control, City may inquire into the qualifications of the prospective transferee or controlling party. Grantee agrees to provide FCC Form 394 as part of any request for transfer or change of control under this Franchise. If, after considering the legal, financial, character and technical qualities of the transferee and determining that they are satisfactory, the City finds that such transfer is acceptable, the Council shall permit such transfer and assignment of the rights and obligations of this Franchise as may be in the public interest. The consent of the Council to such transfer shall not be unreasonably denied.

e. In addition to the aforementioned requirements in this Section 9(1), the City and Grantee shall, at all times, comply with the requirements of Minnesota Statutes Section 238.083 regarding the sale or transfer of a franchise and with all other Applicable Laws.

2. City's Right to Purchase System.

a. The City shall have a right of first refusal to purchase the Cable System in the event the Grantee receives a bona fide offer to purchase the Cable System from any Person provided, however, that if Grantee is authorized to provide telecommunications services on the System pursuant to state or federal law or provides information services on the System, the City may not purchase any portion of the System used to provide such telecommunications or information services. Bona fide offer as used in this section means a written offer which has been accepted by Grantee, subject to the City's rights under this Franchise. The price to be paid by the City shall be the amount provided for in the bona fide offer, including the same terms and conditions as the bona fide offer. The City shall notify Grantee of its decision to purchase within sixty (60) days of the City's receipt from Grantee of a copy of the written bona fide offer.

3. Abandonment or Removal of Franchise Property.

a. In the event that the use of any property of Grantee within the Franchise Area or a portion thereof is discontinued for a continuous period of twelve (12) months, Grantee shall be deemed to have abandoned that property.

b. City, upon such terms as City may impose, may give Grantee written permission to abandon, without removing, any System facility or equipment laid, directly constructed, operated or maintained in, on, under or over the Franchise Area. Unless such permission is granted or unless otherwise provided in this Franchise, the Grantee shall remove all abandoned facilities and equipment upon receipt of written notice from City and shall restore any affected Street 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, Grantee shall refill, at its own expense, any excavation made by or on behalf of Grantee and shall leave all Streets and other public ways and places 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. City shall have the right to inspect and approve the condition of the Streets, public ways, public places, cables, wires, attachments and poles prior to and after removal. The liability, indemnity and insurance provisions of this Franchise and any security fund and performance bond provided for in this Franchise shall continue in full force and effect during the period of removal and until full compliance by Grantee with the terms and conditions of this section.

c. Upon abandonment of any Franchise property in place, the Grantee, if required by the City, shall submit to City a bill of sale and/or other an instrument, satisfactory in form and content to the City, transferring to the City the ownership of the Franchise property abandoned.

d. At the expiration of the term for which this Franchise is granted, or upon its earlier revocation or termination, as provided for herein, in any such case without renewal, extension or transfer, the City shall have the right to require Grantee to remove, at Grantee's sole expense, all above-ground portions of the Cable System from all Streets and public ways within the City within a reasonable period of time, which shall not be less than one hundred eighty (180) days.

e. Notwithstanding anything to the contrary set forth in this Franchise, the Grantee may, with the consent of the City, abandon any underground Franchise property in place so long as it does not materially interfere with the use of the Street or public rights-of-way in which such property is located or with the use thereof by any public utility or other cable operator.

4. Extended Operation and Continuity of Services. Upon termination or forfeiture of this Franchise, Grantee shall remove its cable, wires, and appliances from the Streets, alleys, or other public places within the Service Area if the City so requests. Failure by the Grantee to remove its cable, wires, and appliances as referenced herein shall be subject to the requirements of Section 9(3) of this Franchise.

5. Receivership and Foreclosure. The Franchise granted hereunder shall, at the option of City, cease and terminate one hundred twenty (120) days after appointment of a receiver or receivers, or trustee or trustees, to take over and conduct the business of Grantee, whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless: (1) such receivers or trustees shall have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Franchise granted pursuant hereto, and the receivers or trustees within said one hundred twenty (120) days shall have remedied all the defaults and violations under this Franchise or provided a plan for the remedy of such defaults and violations which is satisfactory to the City; and (2) such receivers or trustees shall, within said one hundred twenty (120) days, execute an agreement duly

approved by the court having jurisdiction in the premises, whereby such receivers or trustees assume and agree to be bound by each and every term, provision and limitation of this Franchise.

6. Performance Bond. Within thirty (30) days of Grantee's execution of this Franchise Grantee shall provide City with a Ten Thousand and No/100 (\$10,000) Performance Bond in a form and with such sureties as are mutually acceptable to the Parties. The Performance Bond shall be eliminated upon completion of the FTTP Network in the Grantee Service Area which the parties anticipate to be completed thirty-six (36) months of Grantee's commencement of physical construction of the System. The Performance Bond shall ensure compliance with all infrastructure requirements of the Franchise. If additional construction, after completion of the Initial Service Area, is undertaken in the City, Grantee shall comply with the foregoing bonding requirements.

7. Procedure for Enforcing Franchise. In the event City believes that Grantee has breached or violated any provision of this Franchise, City shall act in accordance with Section 9(1) (c-f).

a. If the City chooses to terminate this Franchise, the following additional procedure shall be followed:

i. The City shall provide Grantee with written notice of the City's intention to terminate this Franchise and specify in detail the reason or cause for the proposed termination. The City shall allow Grantee a minimum of fifteen (15) days subsequent to receipt of the notice in which to cure the default.

ii. Grantee shall be provided with an opportunity to be heard at a regular or special meeting of City prior to any final decision of City to terminate this Franchise.

b. In the event that City determines to terminate this Franchise, the Grantee shall have an opportunity to appeal said decision in accordance with all Applicable Laws.

c. If a valid appeal is filed, the Franchise shall remain in full force and affect while said appeal is pending, unless the term of the Franchise sooner expires.

8. Reservation of Rights. City and Grantee reserve all rights that they may possess under Applicable Laws unless expressly waived herein.

## **SECTION 10**

### **MISCELLANEOUS PROVISIONS**

1. Franchise Renewal. Any renewal of this Franchise shall be in accordance with Applicable Laws. The term of any renewed Franchise shall be limited to a period not to exceed fifteen (15) years.

2. Amendment of Franchise. Grantee and City may agree, from time to time, to amend this Franchise. Such written amendments may be made subsequent to a review session pursuant to Section 7(2) or at any other time if City and Grantee agree that such an amendment will be in the public interest or if such an amendment is required due to changes in Applicable Laws. City shall act pursuant to local law pertaining to the ordinance amendment process.

3. Right of Individuals.

a. Grantee shall not deny service, deny access, or otherwise discriminate against Subscribers, Channel users, or general citizens on the basis of race, color, religion, disability,

national origin, age, gender or sexual preference. Grantee shall comply at all times with all other Applicable Laws, relating to nondiscrimination.

b. Grantee shall adhere to the applicable equal employment opportunity requirements of Applicable Laws, as now written or as amended from time to time including 47 U.S.C. Section 551, Protection of Subscriber Privacy.

c. No cable line, wire, amplifier, Converter, or other piece of equipment owned by Grantee shall be installed by Grantee in the Subscriber's premises, other than in appropriate easements, without first securing any required consent. If a Subscriber requests service, permission to install upon Subscriber's property shall be presumed. Where a property owner or his or her predecessor was granted an easement including a public utility easement or a servitude to another and the servitude by its terms contemplates a use such as Grantee's intended use, Grantee shall not require the written permission of the owner for the Installation of cable television equipment.

4. Rights Reserved to City. In addition to any rights specifically reserved to the City by this Franchise, the City reserves to itself every right and power which is required to be reserved by a provision of this Franchise.

5. Confidential Information. Notwithstanding anything herein to the contrary, Grantee shall have the right to provide any confidential books and records that it is obligated to make available to the City pursuant to this Franchise, by allowing the City, or its designated representative(s), to view the books and records at a mutually agreeable location and without City obtaining its own copies of such books and records. Alternatively, Confidential or proprietary information may be disclosed pursuant to a reasonable mutually agreeable nondisclosure agreement. The intent of the parties is to work cooperatively to ensure that all books and records reasonably necessary for City's monitoring and enforcement of Franchise obligations are provided to City.

6. Severability. If any provision of this Franchise is held by any Governmental Authority of competent jurisdiction, to be invalid as conflicting with any Applicable Laws now or hereafter in effect, or is held by such Governmental Authority to be modified in any way in order to conform to the requirements of any such Applicable Laws, such provision shall be considered a separate, distinct, and independent part of this Franchise, and such holding shall not affect the validity and enforceability of all other provisions hereof. In the event that such Applicable Laws are 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 laws, said provision shall thereupon return to full force and effect and shall thereafter be binding on City and Grantee, provided that City shall give Grantee thirty (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 Grantee to comply with such provision.

7. Force Majeure. In the event Grantee's performance of any of the terms, conditions, obligations or requirements of this Franchise is prevented or impaired due to any Force Majeure Event, such inability to perform shall be deemed to be excused for the period of such inability and no penalties or sanctions shall be imposed as a result thereof, provided Grantee has notified City in writing within a reasonable time of its discovery of the occurrence of such an event.

8. Free Service. Grantee will provide one (1) free drop and provide basic tier Cable Service for one (1) device at each location specified in Exhibit D.

**SECTION 11**  
**PUBLICATION EFFECTIVE DATE; ACCEPTANCE AND EXHIBITS**

1. Publication; Effective Date. This Franchise shall be effective (“Effective Date”) upon acceptance by Grantee and publication in accordance with Applicable Law.

2. Acceptance. Grantee shall accept this Franchise within thirty (30) of its enactment by the City Council, unless the time for acceptance is extended by City. In the event acceptance does not take place, this Franchise and any and all rights previously granted to Grantee shall be null and void.

a. Upon acceptance of this Franchise, Grantee shall be bound by all the terms and conditions contained herein, subject to the effectiveness of the Franchise as required in Section 11(1).

b. Grantee shall accept this Franchise in the following manner:

i. This Franchise will be properly executed and acknowledged by Grantee and delivered to City.

ii. With its acceptance, Grantee shall also deliver any performance bond and insurance certificates required herein that have not previously been delivered.

Passed and adopted this 19<sup>th</sup> day of January 2022.

**CITY OF HENDERSON, MINNESOTA**

Name: Lon Berberich

Title: City Clerk

Dated: January 19, 2022

ATTEST:

\_\_\_\_\_

Name:

Title:

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

**CMN-RUS, INC.**

\_\_\_\_\_

Name:

Title:

Dated:

SWORN TO BEFORE ME this \_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_

Notary Name

[STAMP HERE]

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

**EXHIBIT A  
OWNERSHIP**

## **EXHIBIT B**

### **CONSUMER PROTECTION AND CUSTOMER SERVICE STANDARDS**

1. The customer protection and service standards set forth in the Exhibit B shall become effective when Grantee commences offering Cable Services in the Initial Franchise Area.
2. Cable System office hours and telephone availability.
  - a. Grantee will maintain a local, toll-free or collect call telephone access line which will be available to its Subscribers twenty-four (24) hours a day, seven (7) days a week.
    - i. Trained Grantee representatives will be available to respond to customer telephone inquiries during Normal Business Hours.
    - ii. After Normal Business Hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after Normal Business Hours must be responded to by a trained Grantee representative on the next business day.
  - b. Under Normal Operating Conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time under Normal Operating Conditions, measured on a quarterly basis.
  - c. Grantee shall not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.
  - d. Under Normal Operating Conditions, the customer will receive a busy signal less than three percent (3%) of the time.
3. Installations, Outages and Service Calls. Under Normal Operating Conditions, each of the following standards will be met no less than ninety-five percent (95%) of the time measured on a quarterly basis.
  - a. Standard Installations will be performed within seven (7) business days after an order has been placed.
  - b. Excluding conditions beyond the control of Grantee, Grantee will begin working on "Service Interruptions" promptly and in no event later than twenty-four (24) hours after the interruption becomes known. Grantee must begin actions to correct other Service problems the next business day after notification of the Service problem.
  - c. The "appointment window" alternatives for Installations, Service calls, and other Installation activities will be either a specific time or, at maximum, a four (4) hour time block during Normal Business Hours. (Grantee may schedule Service calls and other Installation activities outside of Normal Business Hours for the express convenience of the customer.)
  - d. Grantee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.



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

4. Communications between Grantee and Subscribers:

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

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

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

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

5. Billing:

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

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

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

- a. Products and Services offered;

- b. Prices and options for programming services and conditions of subscription to programming and other services;

- c. Installation and Service maintenance policies;

- d. Instructions on how to use the Cable Service;

- e. Channel positions of programming carried on the System; and

- f. Billing and complaint procedures, including the address and telephone number of the Grantee's customer service department. Subscribers shall be advised of the procedures for resolution of complaints about the quality of the television signal delivered by Grantee, including the address of the responsible officer of the Grantee. Subscribers will be notified of any changes in rates, programming services or Channel positions as soon as possible in writing. Notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of Grantee. In addition, Grantee shall notify Subscribers thirty (30) days in advance of any significant changes in the information required by this Section (6).

7. Notice of Rate Programming Change. In addition to the requirement of Section 6(f) regarding advance notification to Subscribers of any changes in rates, programming services or Channel

positions, Grantee shall give thirty (30) days written notice to both Subscribers and the City before implementing any rate or Service change. Such notice shall state the precise amount of any rate change and briefly explain in readily understandable fashion the cause of the rate change (e.g., inflation, change in external costs or the addition/deletion of Channels) When the change involves the addition or deletion of Channels, each Channel added or deleted must be separately identified. For purposes of the carriage of digital broadcast signals, Grantee need only identify for Subscribers, the television signal added and not whether that signal may be multiplexed during certain dayparts.

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

9. Refund Policy. If a Subscriber's Cable Service is interrupted or discontinued, for twenty-four (24) or more consecutive hours, Grantee shall, upon request by the Subscriber, credit such Subscriber pro rata for such interruption. For this purpose, every month will be assumed to have thirty (30) days.

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

11. Customer Bills. Customer bills shall be designed in such a way as to present the information contained therein clearly and comprehensibly to Customers, and in a way that (a) is not misleading and (b) does not omit material information. Notwithstanding anything to the contrary in Section (5), above, Grantee may, in its sole discretion, consolidate costs on Customer bills as may otherwise be permitted by Section 622(c) of the Cable Act (47 U.S.C. §542(c)).

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

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

14. Notification of Complaint Procedure. Grantee shall have printed clearly and prominently on each Subscriber bill and in the customer service agreement provided for in Section (5), the twenty-four (24) hour Grantee phone number for Subscriber complaints. Additionally, Grantee shall provide information to customers concerning the procedures to follow when they are unsatisfied with measures taken by Grantee to remedy their complaint. This information will include the contact information for Grantee's corporate customer service department as provided in Grantee's Privacy Policy.

15. Subscriber Privacy. Grantee shall comply with Min. Stat. § 238.084.

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



## EXHIBIT C

### PEG ACCESS FACILITIES AND EQUIPMENT

1. Public, Educational, and Government (“PEG”) Access Channels.
  - a. Grantee shall provide to each of its Subscribers who receive some or all of the Services offered on the Cable System, reception on at least one (1) specially designated access Channel available for government use (hereinafter collectively referred to as the “PEG Channels”). The City shall have the sole right to program the PEG Channel in accordance with all Applicable Laws. No charges may be made for Channel time or playback of prerecorded programming on the specially designated access Channels.
  - b. Whenever the PEG Channels are in use during eighty percent (80%) of the weekdays, Monday to Friday, for eighty percent (80%) of the time for any consecutive three (3) hour period for six (6) weeks running, and there is demand for use of an additional Channel for the same purpose, the Grantee shall then have six (6) months in which to provide a new PEG Channel for the same purpose, provided that provision of the additional Channel or Channels must not require the Cable System to install Converters.
  - c. The PEG Channels shall be dedicated for PEG use for the term of the Franchise, provided that Grantee may, utilize any portions of the PEG Channels not scheduled for PEG use. City shall establish rules and procedures for such scheduling in accordance with Section 611 of the Cable Act (47 U.S.C. § 531).
  - d. Grantee shall provide the PEG Channels on the Basic Cable Service tier. Upon written request by the City, Grantee shall provide one (1) PEG Channel which may be programmed by the City in high definition (HD). City understands and agrees that if it exercises this option, Grantee may reduce the number of PEG Channels on the Basic Tier to two (2) channels. The City shall be responsible for all equipment and associated costs of providing HD programming beyond the demarcation point, and the Grantee shall be responsible for all System equipment and costs associated with providing the HD channels on its side of the demarcation point. The City acknowledges that receipt of an HD format Channel may require Subscribers to buy or lease special equipment, or pay additional HD charges applicable to all HD services provided by Grantee. A Subscriber to the Basic Cable Service tier only who has Grantee’s HD capable set-top box will be able to receive the HD PEG Channel on that outlet without any additional cost.
2. PEG Technical Quality. Grantee shall meet FCC signal quality standards when offering Access Channels on its Cable System.
3. Relocation of Grantee’s Headend. In the event Grantee relocates its Headend, Grantee will be responsible for replacing or restoring the existing dedicated fiber connections at Grantee's cost so that all the functions and capacity remain available, operate reliably and satisfy all applicable technical standards and related obligations of the Franchise free of charge to the City or its designated entities.
4. PEG Operations. City may in its sole discretion, negotiate agreements with neighboring jurisdictions served by the same Cable System, educational institutions or others to share the operating expenses of the PEG Channels. City and Grantee may negotiate an agreement for management of PEG Access Facilities, if so desired by both parties.
5. Title to PEG Equipment. City shall retain title to all PEG equipment and facilities purchased or otherwise acquired.

6. PEG Access Operating Support.

- a. Upon Grantee's acceptance of this Franchise, Grantee shall collect on behalf of City a per Subscriber fee of One Dollar and Twenty Cents (\$1.20) per month solely to fund public, educational and governmental access expenditures (hereinafter "PEG Fee") which shall be payable quarterly and included in the Fee worksheet Exhibit E. The City Council may reduce the PEG Fee at any time. The PEG Fee shall be automatically increased every two (2) years on or about the Effective Date of this Franchise based on the increase in the Minneapolis/St. Paul Consumer Price Index for all consumers compounded annually or three percent (3%) each year, whichever is higher.
- b. The PEG Fee shall be used by City in its sole discretion to fund PEG Access expenditures in a manner consistent with Applicable Law.
- c. The PEG Fee is not intended to represent part of the Franchise Fee and is intended to fall within one (1) or more of the exceptions in 47 U.S.C. § 542. The PEG Fee may be categorized, itemized, and passed through to Subscribers as permissible, in accordance with 47 U.S.C. §542 or other Applicable Laws. Grantee shall pay the PEG Fee to the City quarterly at the same time as the payment of Franchise Fees under Section 7(1) of the Franchise. Grantee agrees that it will not offset or reduce its payment of past, present or future Franchise Fees required as a result of its obligation to remit the PEG Fee.
- d. Any PEG Fees owing pursuant to this Franchise which remain unpaid more than thirty (30) days after the end of a given quarter shall be delinquent and shall immediately thereafter accrue interest at the same rate and under the same terms as late Franchise Fee payments as set forth in Section 7 of the Franchise. Enforcement of unpaid PEG Fees shall be handled in accordance with Section 9(7) of the Franchise, however, Grantee shall in all cases be subject to interest on any payment more than thirty (30) days after the end of a given quarter.

7. Service to Public Buildings.

- a. Throughout the term of this Franchise, at the request of City, Grantee shall provide, free of charge, one (1) service Drop, one outlet, one (1) Converter, if necessary and requested, and Basic Cable Service ("Complimentary Service"), to all of the sites listed on Exhibit D attached hereto.
- b. The City or the building occupant shall have the right to extend Cable Service throughout the building to additional outlets without any fees imposed by Grantee for the provision of such service to such additional outlets except for the cost of additional terminal equipment required to receive the signals.
- c. Notwithstanding anything to the contrary set forth in this section, Grantee shall not be required to provide Complimentary Service to such buildings unless it is technically feasible.
- d. Grantee shall, in any public building hereinafter built, provide all Drop materials, design specifications and technical advice to provide Complimentary Service to a demark point at such building. If the Drop line to such building exceeds two hundred (200) feet the City or other agency shall pay the Actual Cost of such Drop in excess of two hundred (200) feet.

**EXHIBIT D**  
**SERVICE TO PUBLIC FACILITIES**

N/A

**EXHIBIT E**

**FRANCHISE FEE PAYMENT WORKSHEET**

Revenue Source	Number of Subscribers	Gross Revenue	5% Franchise Fee	YTD
Cable Service Revenue				
Installation Charge				
Advertising Revenue				
Home Shopping Revenue				
Other Revenue				
Equipment rental				
Revenue				
Fee Calculated				