

**ORDINANCE NO. _____
CITY OF BLAINE, MINNESOTA**

CABLE TELEVISION FRANCHISE ORDINANCE

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ORDINANCE NO.

AN ORDINANCE GRANTING A FRANCHISE TO QWEST BROADBAND SERVICES, INC., D/B/A CENTURYLINK, TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE SYSTEM IN THE CITY OF BLAINE, MINNESOTA, FOR THE PURPOSE OF PROVIDING CABLE SERVICE; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM AND THE PUBLIC RIGHTS-OF-WAY IN CONJUNCTION WITH THE CITY'S RIGHT-OF-WAY ORDINANCE, IF ANY; AND PRESCRIBING PENALTIES FOR THE VIOLATION OF THE PROVISIONS HEREIN.

The City Council of the City of Blaine, Minnesota ordains:

STATEMENT OF INTENT AND PURPOSE

Qwest Broadband Services, Inc., d/b/a CenturyLink ("Grantee"), applied for a cable franchise to serve the City. The City will adopt separate findings related to the application and the decision to grant a cable franchise to Grantee, which shall be incorporated herewith by reference. The City intends, by the adoption of this Franchise, to bring about competition in the delivery of cable services in the City.

Adoption of this Franchise is, in the judgment of the Council, in the best interests of the City and its residents.

SECTION 1. SHORT TITLE AND DEFINITIONS

1.1 Short Title.

This Franchise Ordinance shall be known and cited as the "CenturyLink Cable Franchise Ordinance."

1.2 Definitions.

For purposes of this Franchise, the following terms, phrases, words, abbreviations and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future tense; words in the plural number include the singular number; words in the singular number include the plural; and the masculine gender includes the feminine gender. Unless otherwise expressly stated, words not defined herein or in the City Code shall be given the meaning set forth in applicable law and, if not defined therein, the words shall be given their common and ordinary meaning. The word "shall" is always mandatory and not merely directory. The word "may" is directory and discretionary and not mandatory.

1.2.1 "Actual Cost" means the incremental cost to the Grantee of materials, capitalized labor and borrowing necessary to install and construct fiber-optic lines, coaxial cable and/or equipment.

- 1.2.2** “**Affiliate**” means any Person who owns or controls, is owned or controlled by, or is under common ownership or control with the Grantee.
- 1.2.3** “**Basic Cable Service**” means the lowest priced tier of Cable Service that includes the lawful retransmission of local television broadcast signals and any public, educational and governmental access programming required by this Franchise to be carried on the basic tier. Basic Cable Service as defined herein shall not be inconsistent with 47 U.S.C. § 543(b)(7).
- 1.2.4** “**Cable Service**” or “**Service**” means (1) the one-way transmission to Subscribers of (a) video programming or (b) other programming services; and (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming services. Cable Service shall also include any video programming service for which a franchise from a local government is permitted under state law.
- 1.2.5** “**Cable System**” or “**System**” means the facility of the Grantee 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 City, but such term does not include: (1) a facility that only serves to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves Subscribers without using any Rights-of-Way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act, except that such facility shall be considered a System (other than for purposes of 47 U.S.C. § 541(c)) if 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; (4) an open video system that complies with 47 U.S.C. § 573; (5) any facilities of any electric utility used solely for operating its electric utility system; or (6) a translator system which receives and rebroadcasts over-the-air signals. A reference to the System in this Franchise refers to any part of such System including, without limitation, Set Top Boxes. The foregoing definition of “System” shall not be deemed to circumscribe or limit the valid authority of the City to regulate or franchise the activities of any other communications system or provider of communications service to the full extent permitted by law. “Cable System” or “System” as defined herein shall not be inconsistent with the definitions set forth in applicable law. Any reference to “Cable System” or “System” herein, which system is owned or operated by a Person or governmental body other than the Grantee, shall be defined the same as this Section 1.2.5. This definition shall include any facility that is a “cable system” under federal law or a “cable communications system” under state law.
- 1.2.6** “**City**” means the City of Blaine, Minnesota, a municipal corporation, in the State of Minnesota, acting by and through its City Council, or its lawfully appointed designee.

- 1.2.7 “**City Code**” means the Blaine City Code, as amended from time to time.
- 1.2.8 “**Commission**” means the North Metro Telecommunications Commission, a municipal joint powers consortium comprised of the municipalities of Blaine, Centerville, Circle Pines, Ham Lake, Lexington, Lino Lakes and Spring Lake Park, Minnesota. In the event the City lawfully withdraws from the Commission, any reference to the Commission in this Franchise shall thereafter be deemed a reference to the City, and the rights and obligations related thereto shall, where possible, accrue pro rata to the City, pursuant to a transition agreement to be negotiated at such time by and between the City, the Commission and the Grantee. The total burden of Grantee’s obligations under this Franchise and the Grantee’s Franchise with the other member cities of the Commission shall not be increased as a result of any such withdrawal.
- 1.2.9 “**CPI**” means the annual average of the Consumer Price Index for all Urban Consumers (CPI-U) for the Minneapolis-St. Paul CMSA, as published by the Bureau of Labor Statistics.
- 1.2.10 “**Drop**” means the cable that connects the ground block on the Subscriber’s residence or institution to the nearest feeder cable of the System.
- 1.2.11 “**Educational Access Channel**” or “**Educational Channel**” means any channel on the System set aside by the Grantee for Noncommercial educational use by educational institutions, as contemplated by applicable law.
- 1.2.12 “**FCC**” means the Federal Communications Commission, its designee, and any legally appointed, designated or elected agent or successor.
- 1.2.13 “**Franchise**” or “**Cable Franchise**” means this ordinance, as may be amended from time to time, any exhibits attached hereto and made a part hereof, and the regulatory and contractual relationship established hereby.
- 1.2.14 “**Governmental Access Channel**” or “**Governmental Channel**” means any channel on the System set aside by the Grantee for Noncommercial use by the City or its delegatee.
- 1.2.15 “**Grantee**” is Qwest Broadband Services, Inc., d/b/a CenturyLink, and its lawful successors, transferees or assignees.
- 1.2.16 “**Gross Revenues**” means any and all revenues arising from or attributable to, or in any way derived directly or indirectly by the Grantee or its Affiliates, subsidiaries, or parent, or by any other entity that is a cable operator of the System, from the operation of the Grantee’s System to provide Cable Services (including cash, credits, property or other consideration of any kind or nature). Gross Revenues include, by way of illustration and not limitation, monthly fees charged to Subscribers for any basic, optional, premium, per-channel, or per-

program service, or other Cable Service including, without limitation, Installation, disconnection, reconnection, and change-in-service fees; Lockout Device fees; Leased Access Channel fees; late fees and administrative fees; fees, payments or other consideration received from programmers for carriage of programming on the System and accounted for as revenue under GAAP; revenues from rentals or sales of Set Top Boxes or other equipment; fees related to commercial and institutional usage of the System; advertising revenues; interest; barter; revenues from program guides; franchise fees; and revenues to the System from home shopping, bank-at-home channels and other revenue sharing arrangements. Gross Revenues shall include revenues received by an entity other than the Grantee, an Affiliate or another entity that operates the System where necessary to prevent evasion or avoidance of the Grantee's obligation under this Franchise to pay the franchise fee. Gross Revenues shall not include: (i) to the extent consistent with generally accepted accounting principles, actual bad debt write-offs, provided, however, that all or part of any such actual bad debt that is written off but subsequently collected shall be included in Gross Revenues in the period collected; (ii) any taxes on services furnished by the Grantee imposed by any municipality, state or other governmental unit, provided that franchise fees shall not be regarded as such a tax; (iii) FCC regulatory fees; (iv) Subscriber credits, adjustments or refunds; (v) PEG Fees; or (vi) refundable Subscriber deposits.

- 1.2.17** **“Household”** means a distinct address in the Qwest Corporation (“QC”) network database, whether a residence or small business, subscribing to or being offered cable service. Grantee represents and warrants that it has access to the QC network database and shall demonstrate to the City's reasonable satisfaction how the data required in Section 2 are calculated and reported using the QC network database.
- 1.2.18** **“Installation”** means the connection of the System from feeder cable to the point of connection with the Subscriber Set Top Boxes or other terminal equipment.
- 1.2.19** **“Leased Access Channel”** means channels on the System which are designated or dedicated for use by a Person unaffiliated with the Grantee pursuant to 47 U.S.C. § 532.
- 1.2.20** **“Lockout Device”** means an optional mechanical or electrical accessory to a Subscriber's terminal, which inhibits the viewing of a certain program, certain channel or certain channels provided by way of the Cable System.
- 1.2.21** **“Node”** means the transition point between optical light transmission (fiber-optic cable) and the transmission of video and data signals being delivered to and received from the Subscriber's home.
- 1.2.22** **“Noncommercial”** means, in the context of PEG channels, that particular products and services are not promoted or sold. This term shall not be interpreted to prohibit a PEG channel operator or programmer from soliciting and receiving

voluntary financial support to produce and transmit video programming on a PEG channel, or from acknowledging a contribution.

- 1.2.23 “Normal Operating Conditions”** means those service conditions that are within the control of the Grantee. Conditions that 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 . Conditions that 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.
- 1.2.24 “North Metro Franchise Area”** means the geographic area consisting of the Minnesota cities of Blaine, Centerville, Circle Pines, Ham Lake, Lexington, Lino Lakes and Spring Lake Park.
- 1.2.25 “North Metro System”** means the Cable System operated pursuant to this Franchise and located in the member municipalities of the Commission.
- 1.2.26 “PEG”** means public, educational, religious and governmental.
- 1.2.27 “Person”** means any individual, partnership, association, joint stock company, joint venture, domestic or foreign corporation, stock or non-stock corporation, limited liability company, professional limited liability corporation, or other organization of any kind, or any lawful successor or transferee thereof, but such term does not include the City or the Commission.
- 1.2.28 “Public Access Channel(s)”** means any channels on the System set aside by the Grantee for Noncommercial use by the general public, as contemplated by applicable law.
- 1.2.29 “Right-of-Way” or “Rights-of-Way”** means the surface, air space above the surface and the area below the surface of any public street, highway, lane, path, alley, sidewalk, avenue, boulevard, drive, court, concourse, bridge, tunnel, park, parkway, skyway, waterway, dock, bulkhead, wharf, pier, easement or similar property or waters within the City owned by or under control of the City, or dedicated for general public use by the City, including, but not limited to, any riparian right, which, consistent with the purposes for which it was created, obtained or dedicated, may be used for the purpose of installing, operating and maintaining a System. No reference herein to a “Right-of-Way” shall be deemed to be a representation or guarantee by the City that its interest or other right to control or use such property is sufficient to permit its use for the purpose of installing, operating and maintaining the System.
- 1.2.30 “Right-of-Way Ordinance”** means any ordinance of the City codifying requirements regarding regulation, management and use of Rights-of-Way in the City, including registration, fees, and permitting requirements.

1.2.31 “Set Top Box” means an electronic device (sometimes referred to as a receiver) which may serve as an interface between a System and a Subscriber’s television monitor, and which may convert signals to a frequency acceptable to a television monitor of a Subscriber and may, by an appropriate selector, permit a Subscriber to view all signals of a particular service.

1.2.32 “State” means the State of Minnesota, its agencies and departments.

1.2.33 “Subscriber” means any Person that lawfully receives service via the System with the Grantee’s express permission. In the case of multiple office buildings or multiple dwelling units, the term “Subscriber” means the lessee, tenant or occupant.

1.2.34 “System Upgrade” means the improvement or enhancement in the technology or service capabilities made by the Grantee to the System as more fully described in Section 4.

SECTION 2. GRANT OF AUTHORITY AND GENERAL PROVISIONS

2.1 Grant of Franchise.

This Franchise is granted pursuant to the terms and conditions contained herein and in applicable law. The Grantee, the City and the Commission shall comply with all provisions of this Franchise and applicable law, regulations and codes. Failure of the Grantee to construct, operate and maintain a System as described in this Franchise, or to meet obligations and comply with all provisions herein, may be deemed a violation of this Franchise.

2.1.1 Nothing in this Franchise shall be deemed to waive the lawful requirements of any generally applicable City ordinance existing as of the Effective Date.

2.1.2 Each and every term, provision or condition herein is subject to the provisions of state law, federal law, and local ordinances and regulations. The Municipal Code of the City, as the same may be amended from time to time, is hereby expressly incorporated into this Franchise as if fully set out herein by this reference. Notwithstanding the foregoing, the City may not unilaterally alter the material rights and obligations of Grantee under this Franchise.

2.1.3 This Franchise shall not be interpreted to prevent the City from imposing additional lawful conditions, including additional compensation conditions for use of the Rights-of-Way, should Grantee provide service other than cable service.

2.1.4 The parties acknowledge that Grantee intends that Qwest Corporation (“QC”), an affiliate of Grantee, will be primarily responsible for the construction and installation of the facilities in the Rights-of-Way, constituting the cable communications system, which

will be utilized by Grantee to provide cable service. Grantee promises, as a condition of exercising the privileges granted by this Franchise, that any affiliate of the Grantee, including QC, directly or indirectly involved in the construction, management, or operation of the cable communications system will comply with all applicable federal, state and local laws, rules and regulations regarding the use of the City's rights of way. The City agrees that to the extent QC violates any applicable laws, rules and regulations, the City shall first seek compliance directly from QC. In the event, the City cannot resolve these violations or disputes with QC, or any other affiliate of Grantee, then the City may look to Grantee to ensure such compliance. Failure by Grantee to ensure QC's or any other affiliate's compliance with applicable laws, rules and regulations shall be deemed a material breach of this Franchise by Grantee. To the extent Grantee constructs and installs facilities in the rights-of-way, such installation will be subject to the terms and conditions contained herein.

2.1.5 No rights shall pass to Grantee by implication. Without limiting the foregoing, by way of example and not limitation, this Franchise shall not include or be a substitute for:

(1) Any other permit or authorization required for the privilege of transacting and carrying on a business within the City that may be required by the ordinances and laws of the City;

(2) Any permit, agreement, or authorization required by the City for Right-of-Way users in connection with operations on or in Rights-of-Way or public property including, by way of example and not limitation, street cut permits; or

(3) Any permits or agreements for occupying any other property of the City or private entities to which access is not specifically granted by this Franchise including, without limitation, permits and agreements for placing devices on poles, in conduits or in or on other structures.

2.1.6 This Franchise is intended to convey limited rights and interests only as to those Rights-of-Way in which the City has an actual interest. It is not a warranty of title or interest in any Right-of-Way; it does not provide the Grantee with any interest in any particular location within the Right-of-Way; and it does not confer rights other than as expressly provided in the grant hereof.

2.1.7 This Franchise does not authorize Grantee to provide telecommunications service, or to construct, operate or maintain telecommunications facilities. This Franchise is not a bar to imposition of any lawful conditions on Grantee with respect to telecommunications, whether similar, different or the same as the conditions specified herein. This Franchise does not relieve Grantee of any obligation it may have to obtain from the City an authorization to provide telecommunications services, or to construct, operate or maintain telecommunications facilities, or relieve Grantee of its obligation to comply with any such authorizations that may be lawfully required.

2.2 Grant of Nonexclusive Authority.

- 2.2.1 Subject to the terms of this Franchise, the City hereby grants the Grantee the right to own, construct, operate and maintain a System in, along, among, upon, across, above, over, or under the Rights-of-Way. The grant of authority set forth in this Franchise applies only to the Grantee's provision of Cable Service; provided, however, that nothing herein shall limit the Grantee's ability to use the System for other purposes not inconsistent with applicable law or with the provision of Cable Service; and provided further, that any local, State and federal authorizations necessary for the Grantee's use of the System for other purposes are obtained by the Grantee. This Franchise does not confer any rights other than as expressly provided herein, or as provided by federal, State or local law. No privilege or power of eminent domain is bestowed by this Franchise or grant. The System constructed and maintained by Grantee or its agents pursuant to this Franchise shall not interfere with other uses of the Rights-of-Way. The Grantee shall make use of existing poles and other aerial and underground facilities available to the Grantee to the extent it is technically and economically feasible to do so.
- 2.2.2 Notwithstanding the above grant to use Rights-of-Way, no Right-of-Way shall be used by the Grantee if the City determines that such use is inconsistent with the terms, conditions, or provisions by which such Right-of-Way was created or dedicated, or with the present use of the Right-of-Way.
- 2.2.3 This Franchise and the right it grants to use and occupy the Rights-of-Way shall not be exclusive and this Franchise does not, explicitly or implicitly, preclude the issuance of other franchises or similar authorizations to operate Cable Systems within the City. Provided, however, that the City shall not authorize or permit itself or another Person or governmental body to construct, operate or maintain a Cable System on material terms and conditions which are, taken as a whole, more favorable or less burdensome than those applied to the Grantee.
- 2.2.4 This Franchise authorizes only the use of Rights-of-Way for the provision of Cable Service. Therefore, the grant of this Franchise and the payment of franchise fees hereunder shall not exempt the Grantee from the obligation to pay compensation or fees for the use of City property, both real and personal, other than the Rights-of-Way; provided, however, that such compensation or fees are required by City ordinance, regulation or policy and are nondiscriminatory.

2.3 Lease or Assignment Prohibited.

No Person or governmental body may lease Grantee's System for the purpose of providing Cable Service until and unless such Person shall have first obtained and shall currently hold a valid Franchise or other lawful authorization containing substantially similar burdens and obligations to this Franchise, including, without limitation, a requirement on such Person to pay franchise fees on such Person's or governmental body's use of the System to provide Cable Services, to the extent there would be such a

requirement under this Franchise if the Grantee itself were to use the System to provide such Cable Service. Any assignment of rights under this Franchise shall be subject to and in accordance with the requirements of Section 10.5.

2.4 Franchise Term.

This Franchise shall be in effect for a period of five (5) years, such term commencing on the Effective Date specified in Section 2.10, unless sooner renewed, extended, revoked or terminated as herein provided.

2.5 Compliance with Applicable Laws, Resolutions and Ordinances.

- 2.5.1 The terms of this Franchise shall define the contractual rights and obligations of the Grantee with respect to the provision of Cable Service and operation of the System in the City. However, the Grantee shall at all times during the term of this Franchise be subject to the lawful exercise of the police powers of the City, the City's right to adopt and enforce additional generally applicable ordinances and regulations, and lawful and applicable zoning, building, permitting and safety ordinances and regulations. The grant of this Franchise does not relieve the Grantee of its obligations to obtain any generally applicable licenses, permits or other authority as may be required by the City Code, as it may be amended, for the privilege of operating a business within the City or for performing work on City property or within the Rights-of-Way, to the extent not inconsistent with this Franchise. Except as provided below, any modification or amendment to this Franchise, or the rights or obligations contained herein, must be within the lawful exercise of the City's police powers, as enumerated above, in which case the provision(s) modified or amended herein shall be specifically referenced in an ordinance of the City authorizing such amendment or modification. This Franchise may also be modified or amended with the written consent of the Grantee as provided in Section 13.3 herein.
- 2.5.2 The Grantee shall comply with the terms of any City ordinance or regulation of general applicability which addresses usage of the Rights-of-Way within the City which may have the effect of superseding, modifying or amending the terms of Section 3 and/or Section 8.5.3 herein; except that the Grantee shall not, through application of such City ordinance or regulation of Rights-of-Way, be subject to additional burdens with respect to usage of Rights-of-Way that exceed burdens on similarly situated Right-of-Way users.
- 2.5.3 In the event of any conflict between Section 3 and/or Section 8.5.3 of this Franchise and any lawfully applicable City ordinance or regulation which addresses usage of the Rights-of-Way, the conflicting terms in Section 3 and/or Section 8.5.3 of this Franchise shall be superseded by such City ordinance or regulation; except that the Grantee shall not, through application of such City ordinance or regulation of Rights-of-Way, be subject to additional burdens with respect to usage of Public Rights-of-Way that exceed burdens on similarly situated Right-of-Way users.

- 2.5.4 In the event any lawfully applicable City ordinance or regulation which addresses usage of the Rights-of-Way adds to, modifies, amends, or otherwise differently addresses issues addressed in Section 3 and/or Section 8.5.3 of this Franchise, the Grantee shall comply with such ordinance or regulation of general applicability, regardless of which requirement was first adopted; except that the Grantee shall not, through application of such City ordinance or regulation of Rights-of-Way, be subject to additional burdens with respect to usage of Rights-of-Way that exceed burdens on similarly situated Rights-of-Way users.
- 2.5.5 In the event the Grantee cannot determine how to comply with any Right-of-Way requirement of the City, whether pursuant to this Franchise or other requirement, the Grantee shall immediately provide written notice of such question, including the Grantee's proposed interpretation, to the City. The City shall provide a written response within ten (10) business days of receipt indicating how the requirements cited by the Grantee apply. The Grantee may proceed in accordance with its proposed interpretation in the event a written response is not received within thirteen (13) business days of mailing or delivering such written question.

2.6 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 to enable said Grantee to exercise its rights and perform its obligations under this Franchise and applicable law, and to assure uninterrupted service to each and all of its Subscribers; provided that such rules, regulations, terms and conditions shall not be in conflict with provisions hereto, the rules of the FCC, the laws of the State of Minnesota, the City, or any other body having lawful jurisdiction.

2.7 Territorial Area Involved.

This Franchise is granted for the corporate boundaries of the City, as they exist from time to time.

2.7.1 Reasonable Build-Out of the Entire City. The Parties recognize that Grantee, or its affiliate, has constructed a legacy communications system throughout the City that is capable of providing voice grade service. The Parties further recognize that Grantee or its affiliate must expend a significant amount of capital to upgrade its existing legacy communications system and to construct new facilities to make it capable of providing cable service. Further, there is no promise of revenues from cable service to offset these capital costs. The Parties agree that the following is a reasonable build-out schedule taking into consideration Grantee's market success and the requirements of Minnesota state law.

- (i) Complete Equitable Build-Out. Grantee aspires to provide cable service to all households within the City by the end of the initial term of this Franchise. In

addition, Grantee commits that a significant portion of its investment will be targeted to areas below the median income in the City.

- (ii) Initial Minimum Build-Out Commitment. Grantee agrees to be capable of serving a minimum of fifteen percent (15%) of the City's households with cable service during the first two (2) years of the initial Franchise term, provided, however that Grantee will make its best efforts to complete such deployment within a shorter period of time. This initial minimum build-out commitment shall include deployment equitably throughout the City and to a significant number of households below the medium income in the City. Nothing in this Franchise shall restrict Grantee from serving additional households in the City with cable service;
- (iii) Quarterly Meetings. Commencing January 1, 2016, and continuing throughout the term of this Franchise, Grantee shall meet quarterly with the Executive Director of the Commission. At each quarterly meeting, Grantee shall present information acceptable to the City/Commission (to the reasonable satisfaction of the City/Commission) showing the number of Households Grantee is presently capable of serving with cable service and the number of Households that Grantee is actually serving with cable service. Grantee shall also present information acceptable to the City/Commission (to the reasonable satisfaction of the City/Commission) that Grantee is equitably serving all portions of the City in compliance with this subsection 2.8.1. In order to permit the City/Commission to monitor and enforce the provisions of this section and other provisions of this Franchise, the Grantee shall promptly, upon reasonable demand, show to the City/Commission (to the City/Commission's reasonable satisfaction) maps and provide other documentation showing exactly where within the City the Grantee is currently providing cable service;
- (iv) Additional Build-Out Based on Market Success. If, at any quarterly meeting, Grantee is actually serving twenty seven and one-half percent (27.5%) of the Households capable of receiving cable service, then Grantee agrees the minimum build-out commitment shall increase to include all of the Households then capable of receiving cable service plus an additional fifteen (15%) of the total households in the City, which Grantee agrees to serve within two (2) years from the quarterly meeting; provided, however, the Grantee shall make its best efforts to complete such deployment within a shorter period of time. For example, if, at a quarterly meeting with the Commission's Executive Director, Grantee shows that it is capable of serving sixty percent of the households in the City with cable service and is actually serving thirty percent of those Households with cable service, then Grantee will agree to serve an additional fifteen percent of the total households in the City no later than 2 years after that quarterly meeting (a total of 75% of the total households). This additional build-out based on market success shall continue until every household in the City is served;
- (v) Line Extension. Grantee shall not have a line extension obligation until the first date by which Grantee is providing Cable Service to more than fifty percent

(50%) of all subscribers receiving facilities based cable service from both the Grantee and any other provider(s) of cable service within the City. At that time, the City/Commission, in its reasonable discretion and after meeting with Grantee, shall determine the timeframe to complete deployment to the remaining households in the City, including a density requirement that is the same or similar to the requirement of the incumbent franchised cable operator.

2.8 Written Notice.

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

If to City: City of Blaine
10801 Town Square Drive NE
Blaine, Minnesota 55449
Attention: City Manager/Administrator

With copies to: Executive Director
North Metro Telecommunications Commission
12520 Polk Street N.E.
Blaine, MN 55434

And to: Michael R. Bradley
Bradley Hagen & Gullikson, LLC
1976 Wooddale Drive, Suite 3A
Woodbury, MN 55125

If to Grantee: Qwest Broadband Services, Inc. d/b/a CenturyLink
1801 California St., 10th Flr.
Denver, CO 80202
Attn: Public Policy

With copies to: Qwest Broadband Services Inc., d/b/a CenturyLink
200 S. 5th Street, 21st Flr.
Minneapolis, MN 55402
Attn: Public Policy

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

2.9 Effective Date.

This Franchise shall become effective after: (i) all conditions precedent to its effectiveness as an ordinance of the City have occurred; (ii) all conditions precedent to its execution are satisfied; (iii) it has been approved by the City Council in accordance with applicable law; and (iv) it has been accepted and signed by the Grantee and the City in accordance with Section 14 (the “Effective Date”).

SECTION 3. CONSTRUCTION STANDARDS

3.1 Registration, Permits and Construction Codes.

3.1.1 The Grantee shall strictly adhere to all State and local laws, regulations and policies adopted by the City Council applicable to the location, construction, installation, operation or maintenance of the System in the City. The City and/or its delegatee has the right to supervise all construction or installation work performed in the Rights-of-Way as it shall find necessary to ensure compliance with the terms of this Franchise and other applicable provisions of law and regulations.

3.1.2 Failure to obtain permits or to comply with permit requirements shall be grounds for revocation of this Franchise, or any lesser sanctions provided herein or in any other applicable law, code or regulation.

3.2 Restoration of Rights-of-Way and Property.

Any Rights-of-Way, or any sewer, gas or water main or pipe, drainage facility, electric, fire alarm, police communication or traffic control facility of the City, or any other public or private property, which is disturbed, damaged or destroyed during the construction, repair, replacement, relocation, operation, maintenance, expansion, extension or reconstruction of the System shall be promptly and fully restored, replaced, reconstructed or repaired by the Grantee, at its expense, to the same condition as that prevailing prior to the Grantee’s work, to the extent consistent with applicable statutes and rules. It is agreed that in the normal course, with respect to fire and police department facilities and equipment, and water and sewer facilities, and other essential utilities and services, as determined by the City, such restoration, reconstruction, replacement or repairs shall be commenced immediately after the damage, disturbance or destruction is incurred, and the Grantee shall take diligent steps to complete the same, unless an extension of time is obtained from the appropriate City agency or department. In all other cases, reconstruction, replacement, restoration or repairs shall be commenced within no more than three (3) days after the damage, disturbance or destruction is incurred, and shall be completed as soon as reasonably possible thereafter. If the Grantee shall fail to perform the repairs, replacement, reconstruction or restoration required herein, the City shall have the right to put the Rights-of-Way, public or private property back into good condition. In the event City determines that the Grantee is responsible for such disturbance or

damage, the Grantee shall be obligated to fully reimburse the City for required repairs, reconstruction and restoration.

3.3 Conditions on Right-of-Way Use.

- 3.3.1 Nothing in this Franchise shall be construed to prevent the City from constructing, maintaining, repairing or relocating sewers; grading, paving, maintaining, repairing, relocating and/or altering any Right-of-Way; constructing, laying down, repairing, maintaining or relocating any water mains; or constructing, maintaining, relocating or repairing any sidewalk or other public work.
- 3.3.2 All System transmission and distribution structures, lines and equipment erected by the Grantee within the City shall be located so as not to obstruct or interfere with the use of Rights-of-Way except for normal and reasonable obstruction and interference which might occur during construction and to cause minimum interference with the rights of property owners who abut any of said Rights-of-Way and not to interfere with existing public utility installations.
- 3.3.3 The Grantee shall, at its sole expense, by a reasonable time specified by the City, protect, support, temporarily disconnect, relocate or remove any of its property when required by the City by reason of traffic conditions; public safety; Rights-of-Way construction; street maintenance or repair (including resurfacing or widening); change in Right-of-Way grade; construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, tracks or any other type of government-owned communications or traffic control system, public work or improvement of government-owned utility; Right-of-Way vacation; or for any other purpose where the convenience of the City would be served thereby. If the Grantee fails, neglects or refuses to comply with the City's request, the City may protect, support, temporarily disconnect, relocate or remove the appropriate portions of the System at the Grantee's expense for any of the City's incremental costs incurred as a result of the Grantee's failure to comply. Except for the City's gross negligence, the City shall not be liable to the Grantee for damages resulting from the City's protection, support, disconnection, relocation or removal, as contemplated in the preceding sentence.
- 3.3.4 The Grantee shall not place poles, conduits or other fixtures of the System above or below ground where the same will interfere with any gas, electric, telephone, water or other utility fixtures and all such poles, conduits or other fixtures placed in any Right-of-Way shall be so placed as to comply with all lawful requirements of the City.
- 3.3.5 The Grantee shall, upon request of any Person holding a moving permit issued by the 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. The Grantee shall be given not less than ten (10) days' advance written notice to arrange for such temporary wire changes.

- 3.3.6 To the extent consistent with generally applicable City Code provisions, rules and regulations, the Grantee shall have the right to remove, cut, trim and keep clear of its System trees or other vegetation in and along or overhanging the Rights-of-Way. However, in the exercise of this right, the Grantee agrees not to cut or otherwise injure said trees to any greater extent than is reasonably necessary. All trimming shall be performed at no cost to the City, the Commission or a homeowner.
- 3.3.7 The Grantee shall use its best efforts to give prior notice to any adjacent private property owners who will be negatively affected or impacted by Grantee's work in the Rights-of-Way.
- 3.3.8 If any removal, relaying or relocation is required to accommodate the construction, operation or repair of the facilities of a Person that is authorized to use the Rights-of-Way, the Grantee shall, after thirty (30) days' advance written notice and payment of all costs by such Person, commence action to effect the necessary changes requested by the responsible entity. If multiple responsible parties are involved, the City may resolve disputes as to the responsibility for costs associated with the removal, relaying or relocation of facilities among entities authorized to install facilities in the Rights-of-Way if the parties are unable to do so themselves, and if the matter is not governed by a valid contract between the parties or any State or federal law or regulation.
- 3.3.9 In the event the System is contributing to an imminent danger to health, safety or property, as reasonably determined by the City, after providing actual notice to the Grantee, if it is reasonably feasible to do so, the City may remove or relocate any or all parts of the System at no expense to the City or the Commission other than the City's cost to act on such determination.

3.4 Use of Existing Poles and Undergrounding of Cable.

- 3.4.1 Where existing poles, underground conduits, ducts or wire holding structures are available for use by the Grantee, but it does not make arrangements for such use, the City may require, through the established permit, or any other applicable procedure, the Grantee to use such existing poles and wire holding structures if the City determines that the public convenience would be enhanced thereby and the terms available to the Grantee for the use of such poles and structures are just and reasonable.
- 3.4.2 The Grantee agrees to place its cables, wires or other like facilities underground, in the manner as may be required by the provisions of the City Code and City policies, procedures, rules and regulations, as amended from time to time, where all utility facilities are placed underground. The Grantee shall not place facilities, equipment or fixtures where they will interfere with any existing gas, electric, telephone, water, sewer or other utility facilities or with any existing installations

of the City, or obstruct or hinder in any manner the various existing utilities serving the residents of the City. To the extent consistent with the City Code, City policies, procedures, rules and regulations, System cable and facilities may be constructed overhead where poles exist and electric or telephone lines or both are now overhead. However, in no case may the Grantee install poles in areas of the City where underground facilities are generally used by the utilities already operating. If the City, at a future date, requires all electric and telephone lines to be placed underground in all or part of the City, the Grantee shall, within a reasonable time, similarly move its cables and lines. If the City reimburses or otherwise compensates any Person using the Rights-of-Way for the purpose of defraying the cost of any of the foregoing, the City shall also reimburse the Grantee in the same manner in which other Persons affected by the requirement are reimbursed. If the funds are controlled by another governmental entity, the City shall not oppose or otherwise hinder any application for or receipt of such funds on behalf of the Grantee.

3.5 Installation of Facilities.

- 3.5.1 No poles, towers, conduits, amplifier boxes, pedestal mounted terminal boxes, similar structures or other wire-holding structures shall be erected or installed by the Grantee without obtaining any required permit or other authorization from the City.
- 3.5.2 No placement of any pole or wire holding structure of the Grantee is to be considered a vested fee interest in the Rights-of-Way or in City property. Whenever feasible, all transmission and distribution structures, lines, wires, cables, equipment and poles or other fixtures erected by the Grantee within the City are to be so located and installed as to cause minimum interference with the rights and convenience of property owners.

3.6 Safety Requirements.

- 3.6.1 All applicable safety practices required by law shall be used during construction, maintenance and repair of the System. The Grantee agrees, at all times, to employ ordinary and reasonable care and to install and maintain in use commonly accepted methods and devices for preventing failures and accidents that are likely to cause damage or injuries to the public or to property. All structures and all lines, equipment and connections in the Rights-of-Way shall at all times be kept and maintained in a safe condition, consistent with applicable safety codes.
- 3.6.2 The Grantee's construction, operation or maintenance of the System shall be conducted in such a manner as not to interfere with City communications technologies related to the health, safety and welfare of City residents.

- 3.6.3 The Grantee shall install and maintain such devices as will apprise or warn Persons and governmental entities using the Rights-of-Way of the existence of work being performed on the System in Rights-of-Way.
- 3.6.4 The Grantee shall be a member of the One Call Notification System (otherwise known as “Gopher State One Call”) or its successor, and shall field mark the locations of its underground facilities upon request. Throughout the term of this Franchise, the Grantee shall identify the location of its facilities for the City or the Commission at no charge to the City or the Commission.

3.7 Removal of Facilities at Expiration of Franchise.

At the expiration of the term for which this Franchise is granted, or upon the expiration of any renewal or extension period which may be granted, the City shall have the right to require the Grantee, at the Grantee’s sole expense: (i) to remove all portions of the System from all Rights-of-Way within the City; and (ii) to restore affected sites to their original condition, unless Grantee, or its affiliate, has a separate authorization from the City to occupy the City’s Rights-of-Way. Should the Grantee fail, refuse or neglect to comply with the City’s directive, all portions of the System, or any part thereof, may at the option of the City become the sole property of the City, at no expense to the City, or be removed, altered or relocated by the City at the cost of the Grantee. The City shall not be liable to the Grantee for damages resulting from such removal, alteration or relocation.

SECTION 4. DESIGN PROVISIONS

4.1 System Facilities and Equipment.

4.1.1 Grantee shall develop, construct and operate a state-of-the-art cable communications system, constructed in accordance with Section 2.8.1, which shall have at least the following characteristics:

4.1.1.1 A modern design when built, utilizing an architecture that will permit additional improvements necessary for high-quality and reliable service throughout the Franchise term, and the capability to operate continuously on a twenty-four (24) hour a day basis without severe material degradation during operating conditions typical to the Minneapolis/St. Paul metropolitan area;

4.1.1.2 Standby power generating capacity at the headend. The Grantee shall maintain standby power generators capable of powering all headend equipment for at least twenty-four (24) hours. The back-up power supplies serving the System shall be capable of providing power to the System for not less than three (3) hours per occurrence measured on an annual basis according to manufacturer specifications in the event of an electrical outage. The Grantee shall maintain sufficient portable generators to be deployed in the

event that the duration of a power disruption is expected to exceed three (3) hours;

- 4.1.1.3 Facilities of good and durable quality, generally used in high-quality, reliable systems of similar design;
- 4.1.1.4 A System that conforms to or exceeds all applicable FCC technical performance standards, as amended from time to time, which standards are incorporated herein by reference, and any other applicable technical performance standards. Upstream signals shall at all times meet or exceed manufacturers' specifications for successful operation of upstream equipment provided by the Grantee or approved for use by the Grantee at any Subscriber's premises. End of the line performance must meet or exceed FCC specifications at the end of the Subscriber Drop;
- 4.1.1.5 A System shall, at all times, comply with applicable federal, State and local rules, regulations, practices and guidelines pertaining to the construction, upgrade, operation, extension and maintenance of Cable Systems, including, by way of example (but not limitation):
 - (A) National Electrical Code, as amended from time to time; and
 - (B) National Electrical Safety Code (NESC), as amended from time to time;
- 4.1.1.6 Facilities and equipment sufficient to cure violations of FCC technical standards and to ensure that Grantee's System remains in compliance with the standards specified in subsection 4.1.1.5;
- 4.1.1.7 Such facilities and equipment as necessary to maintain, operate and evaluate the Grantee's System for compliance with FCC technical and customer service standards, as such standards may hereafter be amended;
- 4.1.1.8 Status monitoring equipment to alert the Grantee when and where back-up power supplies are being used, which capability shall be activated and used on or before the completion of the System Upgrade;
- 4.1.1.9 All facilities and equipment required to properly test the System and conduct an ongoing and active program of preventative and demand maintenance and quality control, and to be able to quickly respond to customer complaints and resolve System problems;

- 4.1.1.10 Antenna supporting structures designed in accordance with any applicable governmental building codes, as amended, and painted, lighted and erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration, the Federal Communications Commission and all other applicable codes and regulations;
 - 4.1.1.11 Facilities and equipment at the headend allowing the Grantee to transmit or cablecast signals in substantially the form received, without substantial alteration or deterioration;
 - 4.1.1.12 The Grantee shall provide adequate security provisions in its Subscriber site equipment to permit parental control over the use of Grantee's Cable Service. The Grantee, however, shall bear no responsibility for the exercise of parental controls and shall incur no liability for any Subscriber's or viewer's exercise or failure to exercise such controls;
 - 4.1.1.13 Facilities and equipment capable of operating within the temperature ranges typical to the climate of the North Metro Franchise Area over the calendar year;
 - 4.1.1.14 The System shall be so constructed and operated that there is no perceptible deterioration in the quality of Public, Educational, Governmental or religious Access Channel signals after delivery of such signals to the first interface point with Grantee's bi-directional fiber PEG transport line, Grantee's headend or the subscriber network, whichever is applicable, as compared with the quality of any other channel on the System. As used in this paragraph, "deterioration" refers to delivery that is within the control of the Grantee; and
 - 4.1.1.15 The Grantee must have TDD/TYY (or equivalent) equipment at the company office, and a publicly listed telephone number for such equipment, that will allow hearing impaired customers to contact the company.
- 4.1.2 Emergency Alert System. At all times during the term of this Franchise, Grantee shall provide and maintain an Emergency Alert System ("EAS"), consistent with applicable federal law and regulations including 47 C.F.R., Part 11, and any State of Minnesota Emergency Alert System Plan requirements. The EAS shall allow authorized officials to override the audio and video signals on all Channels to transmit and report emergency information. In the case of any sudden, unforeseen event that has the potential to cause significant damage, destruction, or loss of life, Grantee shall make the EAS available without charge and in a manner consistent with any State of Minnesota

Emergency Alert System Plan (“Plan”) for the duration of such sudden, unforeseen event. Grantee shall cooperate with designated state officials to test the emergency override system, for periods not to exceed one minute in duration and not more than once every six months, and upon request by the City, provide verification of compliance with any State Plan. The City may identify authorized emergency officials for activating Grantee’s EAS consistent with the State’s Plan, and the City may also develop a local plan containing methods of EAS message distribution, subject to applicable laws.

- 4.1.3 During construction activities related to the System, the Grantee shall attempt to identify and take into account the Cable Service interests of the business community within the City. The Grantee shall, in connection with System construction, install conduit adequately sized to address future System rebuilds or System additions, with the intent to obviate the need to reopen the Rights-of-Way for construction and installation work.
- 4.1.4. The City may request, as part of the System construction, that the Grantee remove from the Rights-of-Way, at its own expense, its existing equipment, plant and facilities that will not be used in the future, whether activated or not. If any unused or deactivated equipment remains in Rights-of-Way after such City request and the Grantee’s reasonable opportunity to remove, the City may remove such plant, facilities and equipment at the Grantee’s expense. The Grantee may appeal any request to remove existing equipment, plant and facilities to the City Council and thereby stay City action until a final decision is issued by the City Council. In the event existing facilities, plant and equipment are left underground in the Rights-of-Way, the City or the Commission may require the Grantee to provide accurate maps showing the location and the nature of the deactivated or unused facilities, plant and equipment, if such information has not already been provided to the City or the Commission.
- 4.1.5. The Grantee shall not assert or otherwise raise any claim before a court of competent jurisdiction or any administrative agency alleging that, as of the Effective Date of this Franchise, the System design and performance requirements set forth in this Franchise are unenforceable under or inconsistent with then current applicable laws or regulations, or any orders, rules or decisions of the FCC.

4.2 Periodic Progress Reporting.

Following commencement of construction, the Grantee shall, upon request of the Commission, meet with the Commission and provide an update on the progress of the construction.

- 4.2.1 Public Notification. Prior to the beginning of the System construction, and periodically during each phase of construction, the Grantee shall inform the public and its Subscribers, through various means, about: (i) the progress of

construction; (ii) areas where construction crews will be working; and (iii) any expected temporary interruptions to existing services which may occur.

4.3 System Maintenance.

- 4.3.1 The Grantee shall interrupt Cable Service only for good cause and for the shortest time possible. Such interruption shall occur during periods of minimum use of the System. The Grantee shall use its best efforts to provide the Commission with at least twenty-four (24) hours prior notice of a planned service interruption, except for a planned service interruption which will have a minimal impact on Subscribers, usually meaning affecting less than one hundred (100) Subscribers or less than a fifteen (15) minute interruption.
- 4.3.2 Maintenance of the System shall be performed in accordance with the applicable technical performance and operating standards established by FCC rules and regulations. Should the FCC choose to abandon this field and does not preempt the City's entry into this field, the City may adopt such technical performance and operating standards as its own, and the Grantee shall comply with them at all times.

4.4 System Tests and Inspections; Special Testing.

- 4.4.1 Grantee shall perform all tests necessary to demonstrate compliance with the requirements of the Franchise and other performance standards established by applicable law or regulation.
- 4.4.2 The City and the Commission shall have the right to inspect all construction or installation work performed pursuant to the provisions of the Franchise. In addition, the City and/or the Commission may require special testing of a location or locations within the System if there is a particular matter of controversy or unresolved complaints regarding System construction, operations or installation work pertaining to such location(s). Such tests shall be limited to the particular matter in controversy. The City and/or the Commission shall endeavor to so arrange its request for such special testing so as to minimize hardship or inconvenience to the Grantee or to the Subscribers of such testing.
- 4.4.3 Before ordering such tests, the Grantee shall be afforded thirty (30) days following receipt of written notice to investigate and, if necessary, correct problems or complaints upon which tests were ordered. The City and/or the Commission, as applicable, shall meet with the Grantee prior to requiring special tests to discuss the need for such and, if possible, visually inspect those locations which are the focus of concern. If, after such meetings and inspections, the City and/or the Commission wishes to commence special tests and the thirty (30) days have elapsed without correction of the matter in controversy or resolution of complaints, the tests shall be conducted at the Grantee's expense by a qualified

engineer selected by the City and/or the Commission, as applicable, and the Grantee shall cooperate in such testing.

4.4.4 Unless otherwise provided in this Franchise, tests shall be supervised by the Grantee's chief technical authority, or designee, who shall certify all records of tests provided to the City and the Commission.

4.4.5 The Grantee shall provide the City and the Commission with at least two (2) business days' prior written notice of, and opportunity to observe, any tests performed on the System as it specifically relates to cable service.

4.4.5.1 Test results shall be filed with the City and the Commission within fourteen (14) days of a written request by the City and/or the Commission.

4.4.5.2 If any test indicates that any part or component of the System fails to meet applicable requirements, the Grantee, without requirement of additional notice or request from the City or the Commission, shall take corrective action, retest the locations and advise the City and the Commission of the action taken and the results achieved by filing a written report certified by the Grantee's chief technical authority, or designee.

4.5 Drop Testing and Replacement.

The Grantee shall replace, at no separate charge to an individual Subscriber, all Drops and/or associated passive equipment incapable of passing the full System capacity at the time a Subscriber upgrades.

4.6 FCC Reports.

Unless otherwise required by the terms of this Franchise, the results of any tests required to be filed by Grantee with the FCC or in the Grantee's public file, as it relates to cable service pursuant to this Franchise, shall upon request of the City or the Commission also be filed with the City or the Commission, as applicable, within ten (10) days of the request.

4.7 Lockout Capability.

Upon the request of a Subscriber, the Grantee shall make lockout capability available at no additional charge, other than a charge for a Set Top Box.

4.8 Types of Service.

Any change in programs or services offered shall comply with all lawful conditions and procedures contained in this Franchise and in applicable law or regulations.

4.9 Uses of System.

The Grantee shall, upon request of the Commission, advise the Commission of all active uses of the System, for both entertainment and other purposes, and the Commission shall have the right to conduct unannounced audits of such usage.

4.10 Additional Capacity.

The Grantee shall notify the City and the Commission in writing, in advance of the installation of any fiber optic capacity not contemplated by the initial System design, so that additional fibers may be installed on an Actual Cost basis for government and institutional use. If the City wishes to request additional fiber, it may notify the Grantee within fifteen (15) days of receipt of the Grantee's notification; provided, however, Grantee shall not be required to violate its telecommunications federal or state tariff.

SECTION 5. SERVICE PROVISIONS

5.1 Customer Service Standards.

The Grantee shall at all times comply with FCC customer service standards. In addition, the Grantee shall at all times satisfy all additional or stricter customer service requirements included in this Franchise and any customer service requirements set forth in any ordinance or regulation lawfully enacted by the City, upon 90 days' notice.

5.2 Video Programming.

Except as otherwise provided in this Franchise or in applicable law, all programming decisions remain the discretion of the Grantee, provided that the Grantee notifies the City, the Commission and Subscribers in writing thirty (30) days prior to any channel additions, deletions or realignments unless otherwise permitted under applicable federal, State and local laws and regulations. Grantee shall cooperate with the City, and use best efforts to provide all Subscriber notices to the Commission prior to delivery to Subscribers. Location and relocation of the PEG channels shall be governed by Sections 6.1.3-6.1.4.

5.3 Regulation of Service Rates.

5.3.1 The City and/or its delegatee may regulate rates for the provision of Cable Service, equipment or any other communications service provided over the System to the extent allowed under federal or State law(s). The City reserves the right to regulate rates for any future services to the extent permitted by law.

5.3.2 The Grantee shall provide at least 30 days' prior written notice (or such longer period as may be specified in FCC regulations) to Subscribers and to the City of any changes in rates, regardless of whether or not the Grantee believes the affected rates are subject to regulation, except to the extent such notice

requirement is specifically waived by governing law. Bills must be clear, concise and understandable, with itemization of all charges.

5.4 Sales Procedures.

The Grantee shall not exercise deceptive sales procedures when marketing Services within the City. In its initial communication or contact with a Subscriber or a non-Subscriber, and in all general solicitation materials marketing the Grantee or its Services as a whole, the Grantee shall inform the non-Subscriber of all levels of Service available, including the lowest priced and free service tiers. The Grantee shall have the right to market door-to-door during reasonable hours consistent with local ordinances and regulations.

5.5 Subscriber Inquiry and Complaint Procedures.

5.5.1 The Grantee shall have a publicly listed toll-free telephone number which shall be operated so as to receive general public and Subscriber complaints, questions and requests on a twenty-four (24) hour-a-day, seven (7) days-a-week, 365 days-a-year basis. Trained representatives of the Grantee shall be available to respond by telephone to Subscriber and service inquiries.

5.5.2 The Grantee shall maintain adequate numbers of telephone lines and personnel to respond in a timely manner to schedule service calls and answer Subscriber complaints or inquiries in a manner consistent with regulations adopted by the FCC and the City where applicable and lawful. 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 (90) percent of the time under Normal Operating Conditions, measured on a quarterly basis. Under Normal Operating Conditions, the customer will receive a busy signal less than three (3) percent of the time.

5.5.3 Subject to the Grantee's obligations pursuant to law regarding privacy of certain information, the Grantee shall prepare and maintain written records of all complaints received from the City and the Commission and the resolution of such complaints, including the date of such resolution. Such written records shall be on file at the office of the Grantee. The Grantee shall provide the City and/or the Commission with a written summary of such complaints, upon request. As to Subscriber complaints, Grantee shall comply with FCC record-keeping regulations, and make the results of such record-keeping available to the City and/or the Commission, upon request.

5.5.4 Excluding conditions beyond the control of the Grantee, the Grantee shall commence working on a service interruption within twenty-four (24) hours after the service interruption becomes known and pursue to conclusion all steps

reasonably necessary to correct the interruption. The Grantee must begin actions to correct other service problems the next business day after notification of the service problem, and pursue to conclusion all steps reasonably necessary to correct the problem.

5.5.5 The Grantee may schedule appointments for Installations and other service calls either at a specific time or, at a maximum, during a four-hour time block during the hours of 9:00 a.m. to 8:00 p.m., Monday through Friday, and 9:00 a.m. to 5:00 p.m. on Saturdays. The Grantee may also schedule service calls outside such hours for the convenience of customers. The Grantee shall use its best efforts to not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment. If the installer or technician is late and will not meet the specified appointment time, he/she must use his/her best efforts to contact the customer and reschedule the appointment at the sole convenience of the customer. Service call appointments must be met in a manner consistent with FCC standards.

5.5.6 The Grantee shall respond to written complaints from the City and the Commission in a timely manner, and provide a copy of each response to the City and the Commission within thirty (30) days. In addition, the Grantee shall respond to all written complaints from Subscribers within (30) days of receipt of the complaint.

5.6 Subscriber Contracts.

The Grantee shall file with the Commission any standard form Subscriber contract utilized by Grantee. If no such written contract exists, the Grantee shall file with the Commission a document completely and concisely stating the length and terms of the Subscriber contract offered to customers. The length and terms of any Subscriber contract(s) shall be available for public inspection during the hours of 9:00 a.m. to 5:00 p.m., Monday through Friday.

5.7 Service Credit.

5.7.1 In the event a Subscriber establishes or terminates service and receives less than a full month's service, Grantee shall prorate the monthly rate on the basis of the number of days in the period for which service was rendered to the number of days in the billing cycle.

5.7.2 If, for any reason, Service is interrupted for a total period of more than twenty-four (24) hours in any thirty (30) day period, Subscribers that had interrupted service shall, upon request, be credited pro rata for such interruption.

5.8 Refunds or Credits.

5.8.1 Any refund checks shall be issued promptly, but not later than either:

5.8.1.1 The Subscriber's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier; or

5.8.1.2 The return of the equipment supplied by the Grantee if Service is terminated.

5.8.2 Any credits for Service shall be issued no later than the Subscriber's next billing cycle following the determination that a credit is warranted.

5.9 Late Fees.

Fees for the late payment of bills shall not be assessed until after the Service has been fully provided. Late fee amounts on file with the Commission shall not be adjusted by the Grantee without the Commission's prior approval.

5.10 Notice to Subscribers.

5.10.1 The Grantee shall provide each Subscriber at the time Cable Service is installed, and at least every twelve (12) months thereafter, the following materials:

5.10.1.1 Instructions on how to use the Cable Service;

5.10.1.2 Billing and complaint procedures, and written instructions for placing a service call, filing a complaint or requesting an adjustment (including when a Subscriber is entitled to refunds for outages and how to obtain them);

5.10.1.3 A schedule of rates and charges, channel positions and a description of products and services offered;

5.10.1.4 Prices and options for programming services and conditions of subscription to programming and other services; and

5.10.1.5 A description of the Grantee's installation and service maintenance policies, Subscriber privacy rights, delinquent Subscriber disconnect and reconnect procedures and any other of its policies applicable to Subscribers.

5.10.2 Copies of materials specified in the preceding subsection shall be provided to the City and the Commission upon request.

5.10.3 All Grantee promotional materials, announcements and advertising of Cable Service to Subscribers and the general public, where price information is listed in any manner, shall be clear, concise, accurate and understandable.

5.11 Exclusive Contracts and Anticompetitive Acts Prohibited.

5.11.1 The Grantee may not require a residential Subscriber to enter into an exclusive contract as a condition of providing or continuing Cable Service.

5.11.2 The Grantee shall not engage in acts prohibited by federal or State law that have the purpose or effect of limiting competition for the provision of Cable Service in the City.

5.12 Office Availability and Payment Centers.

5.12.1 The Grantee shall install, maintain and operate, throughout the term of this Franchise, a single staffed payment center with regular business hours in the North Metro Franchise Area at a location agreed upon by the Commission and the Grantee. Additional payment centers may be installed at other locations. The purpose of the payment center(s) shall be to receive Subscriber payments. All subscriber remittances at a payment center shall be posted to Subscribers' accounts within forty-eight (48) hours of remittance. Subscribers shall not be charged a late fee or otherwise penalized for any failure by the Grantee to properly credit a Subscriber for a payment timely made.

5.12.2 The Grantee shall, at the request of and at no delivery or retrieval charge to a Subscriber, deliver or retrieve electronic equipment (*e.g.*, Set Top Boxes and remote controls).

5.12.3 After consultation with the Commission, the Grantee shall provide Subscribers with at least sixty (60) days' prior notice of any change in the location of the customer service center serving the North Metro System, which notice shall apprise Subscribers of the customer service center's new address, and the date the changeover will take place.

SECTION 6. ACCESS CHANNEL(S) PROVISIONS

6.1 Public, Educational and Government Access.

6.1.1 The Commission is hereby designated to operate, administer, promote, and manage PEG access programming on the Cable System.

6.1.2 Within one hundred twenty (120) days from the Effective Date, The Grantee shall provide twelve (12) channels (the "Access Channels") to be used for PEG access programming on the basic service tier. The City and Commission have the sole discretion to designate the use of each Access Channel. Grantee shall provide a technically reliable path for upstream and downstream transmission of the Access Channels, which will in no way degrade the technical quality of the Access Channels, from an agreed upon demarcation point at the Commission's Master Control Center at the Commission's office, and from any other designated Access

providers' locations, to Grantee's headend, on which all Access Channels shall be transported for distribution on Grantee's subscriber network. The Access Channels shall be delivered without degradation to subscribers in the technical format (e.g. HD or SD) as delivered by the Commission and any designated Access provider to Grantee at each demarcation point at the Commission Office and at the designated Access providers' locations.

6.1.2.1 All of the Access Channels will be made available through a multi-channel display (i.e. a picture in picture feed) on a single TV screen called a "mosaic" (the "North Metro Mosaic"), where a cable subscriber can access via an interactive video menu one of any of the 12 Access Channels. The North Metro Mosaic will be located on Channel 16. The 12 Access Channels will be located at Channels 8026-8037. The North Metro Mosaic will contain only Access Channels authorized by the Commission.

6.1.2.2 Grantee will make available to the Commission the ability to place detailed scheduled Access Channel programming information on the interactive channel guide by putting the Commission in contact with the electronic programming guide vendor ("EPG provider") that provides the guide service (currently Gracenote). Grantee will be responsible for providing the designations and instructions necessary to ensure the Access Channels will appear on the programming guide throughout the City and any necessary headend costs associated therewith. The Commission shall be responsible for providing programming information to the EPG provider.

6.1.2.3 For purposes of this Franchise, the term channel shall be as commonly understood and is not any specific bandwidth amount. The signal quality of the Access Channels shall be the same as the local broadcast channels, provided such signal quality is delivered to Grantee at the Access Channels' respective demarcation points.

6.1.2.4 Grantee will provide, at no cost to the Commission, air time on non-Access channels during periods in which ample unsold/unused air time on such channels exists for City public service announcements (PSAs). The Commission will provide a 30-second PSA prior to the start of each month on a mutually agreed-upon schedule.

6.1.2.5 In the event Grantee makes any change in the Cable System and related equipment and facilities or in its signal delivery technology, which requires the City or Commission to obtain new equipment in order to be compatible with such change for purposes of transport and delivery of the Access Channels to the Grantee's headend,

Grantee shall, at its own expense and free of charge to the City, the Commission, or its designated entities, purchase such equipment as may be necessary to facilitate the cablecasting of the Access Channels in accordance with the requirements of the Franchise.

- 6.1.2.6** Neither the Grantee nor the officers, directors, or employees of the Grantee is liable for any penalties or damages arising from programming content not originating from or produced by the Grantee and shown on any public access channel, education access channel, government access channel, leased access channel, or regional channel.
- 6.1.2.7** Within one hundred twenty (120) days of a written request from the Commission, Grantee shall make available as part of Basic Service to all Subscribers a PEG Access Video-on Demand (PEG-VOD) Service and maintain a PEG-VOD system. The PEG-VOD system shall be connected by the Grantee such that:

 - 6.1.2.7.1** Twenty-five (25) hours of programming per member city of Commission, or such greater amount as may be mutually agreed to by the parties, as designated and supplied by the City, Commission, or its Designated Access Provider to the Grantee may be electronically transmitted and/or transferred and stored on the PEG-VOD system; and
 - 6.1.2.7.2** A database of that programming may be efficiently searched and a program requested and viewed over the PEG-VOD system by any Subscriber in the City; and
 - 6.1.2.7.3** Programming submitted for placement on the PEG-VOD system, shall be placed on and available for viewing from the PEG-VOD system within forty-eight (48) hours of receipt of said programming;
 - 6.1.2.7.4** The hardware and software described in Subsection (8) below, shall be in all respects of the same or better technical quality as the hardware and software utilized by Grantee in the provision of any other video on demand services offered over the Cable System, and shall be upgraded at Grantee's cost, when new hardware or software is utilized on Grantee's Cable System for other video on demand services. Grantee shall provide reasonable technical assistance to allow for proper use and operation when encoding hardware or software is installed and/or upgraded at City's facilities.

6.1.2.8 To ensure compatibility and interoperability, the Grantee shall supply and maintain all necessary hardware and software to encode, transmit and/or transfer Government Access programming from the City to the PEG-VOD system. The City shall be responsible for all monitoring of any equipment provided under this Section, and notifying Grantee of any problems. Grantee shall provide all technical support and maintenance for the equipment provided to the City by Grantee under this Section. After notification of any equipment problems, Grantee shall diagnose and resolve the problem within forty eight (48) hours. Major repairs which cannot be repaired within the forty eight (48) hour timeframe shall be completed within seven (7) days of notice, unless, due to Force Majeure conditions, a longer time is required. "Major repairs" are those that require equipment to be specially obtained in order to facilitate the repairs. The quality of signal and the quality of service obtained by a Subscriber utilizing the PEG-VOD service shall meet or exceed the quality standards established for all other programming provided by the Grantee and as established elsewhere in this Franchise Agreement.

The Commission shall have the right to rename, reprogram or otherwise change the use of these channels at any time, in its sole discretion, provided such use is Noncommercial and public, educational, governmental or religious in nature. Nothing herein shall diminish any rights of the City and the Commission to secure additional PEG channels pursuant to Minn. Stat. § 238.084, which is expressly incorporated herein by reference.

6.1.3 The Access Channels, including the North Metro Mosaic channel, shall not be relocated without the consent of the Commission. If the Commission agrees to change the channel designation for Access Channels, the Grantee must provide at least three (3) months' notice to the City and the Commission prior to implementing the change, and shall reimburse the Commission and/or PEG entity for any reasonable costs incurred for: (i) purchasing or modifying equipment, business cards and signage; (ii) any marketing and notice of the channel change that the Commission reasonably determines is necessary; (iii) logo changes; and (iv) promoting, marketing and advertising the channel location of the affected Access Channels during the twelve-month period preceding the effective date of the channel change. Alternatively, the Grantee may choose to supply necessary equipment itself, provided such equipment is satisfactory to the Commission or PEG entity.

6.1.4 In the event the Grantee makes any change in the System and related equipment and facilities or in signal delivery technology, which change directly or indirectly causes the signal quality or transmission of PEG channel programming or PEG services to fall below technical standards under applicable law, the Grantee shall, at its own expense, provide any necessary technical assistance, transmission

equipment and training of PEG personnel, and in addition, provide necessary assistance so that PEG facilities may be used as intended, including, among other things, so that live and taped programming can be cablecasted efficiently to Subscribers.

6.1.5 Subject to Section 6.1.2.1, all PEG channels shall be transmitted in the same format as all other Basic Cable Service channels and shall be carried on the Basic Service tier and shall be provided to all cable subscribers regardless of the tier or package of cable service subscribed to by the subscriber.

6.1.6 Except as otherwise provided in this Franchise, the Commission shall be responsible for any necessary master control switching of PEG signals and Institutional Network.

6.2 PEG Support Obligations.

6.2.1 Grantee shall pay a PEG Fee of \$3.16/subscriber/month from the effective date until the franchise renews. Starting with the 2016 calendar year, the City may elect to increase this fee based on the incumbent's cable franchise PEG support obligation, or the Consumer Price Index. Any such election must be made in writing to the Franchisee no later than September 1st prior to the year in which the increase shall apply. In no event shall the monthly per subscriber fee be in an amount different from the incumbent cable provider. The PEG fee may be used for operational or capital support of PEG programming. The PEG Fee may be itemized on the Subscriber billing statements per applicable law. The Grantee shall apply one PEG Fee on the master account for services to non-dwelling bulk accounts (such as hotels, motels, prisons and hospitals). The Grantee shall calculate PEG Fees on a pro rata basis for bulk accounts in residential multiple dwelling unit ("MDU") buildings in the following manner: if the bulk rate for Basic Cable Service is one third (1/3) of the current residential rate, then a pro-rated PEG Fee shall be added to the bulk bill for an MDU building in an amount equal to one third (1/3) of the current PEG Fee. If the bulk rate for Basic Cable Service is raised in any MDU building, the pro-rated PEG Fee in that building shall be recalculated and set based on the foregoing formula, regardless of any cap on per Subscriber PEG Fee amounts. Payments for the PEG Fee pursuant to this subsection shall be made quarterly based on actual receipts from the prior quarter on the same schedule as franchise fee payments.

6.2.2 The Grantee shall provide the fiber-optic or other cabling and other electronics, equipment, software and other materials necessary to transport all PEG signals from their origination point to and from the Commission's master control to the appropriate subscriber network channel, including channels provided discretely. Grantee shall provide the aforementioned cabling, electronics, equipment, software and other materials at no cost to the City, the Commission, and the North Metro Media Center. This equipment shall include one (1) encoder for each Access Channel.

6.3 Regional Channel 6.

The Grantee shall designate standard VHF Channel 6 for uniform regional channel usage to the extent required by State law.

6.4 Leased Access Channels.

The Grantee shall provide Leased Access Channels as required by federal and State law.

6.5 PEG Obligations.

Except as expressly provided in this Franchise, the Grantee shall not make any changes in PEG support or in the transmission, reception and carriage of PEG channels and equipment associated therewith, without the consent of the City and/or the Commission.

6.6 Costs and Payments not Franchise Fees.

The parties agree that any costs to the Grantee and payments from the Grantee associated with the provision of support for PEG access, pursuant to Sections 6 and 7 of this Franchise do not constitute and are not part of a franchise fee and fall within one or more of the exceptions to 47 U.S.C. § 542. If the incumbent franchised cable operator agrees to provide any support of the Access Channels in excess of the amount identified above or to any payment in support of any other PEG-related commitment after the Effective Date of this Franchise, the Commission, in its reasonable discretion, after meeting with the Grantee, will determine whether Grantee's PEG Fee should be changed. If Grantee is required to pay any additional PEG Fee, such amount must be based upon a per subscriber/per month fee.

SECTION 7. INSTITUTIONAL NETWORK (I-NET) PROVISIONS AND RELATED COMMITMENTS

7.1 Twin Cities Metro PEG Interconnect Network.

Grantee shall provide a discrete, non-public, video interconnect network, from an agreed upon demarcation point at the Commission's Master Control Center at the Commission's office, to Grantee's headend. The video interconnect network shall not exceed 50 Mbps of allocated bandwidth, allowing PEG operators that have agreed with Grantee to share (send and receive) live and recorded programming for playback on their respective systems. Where available the Grantee shall provide the video interconnect network and the network equipment necessary, for the high-priority transport of live multicast HD/SD video streams as well as lower-priority file-sharing. Grantee shall provide 50 Mbps bandwidth for each participating PEG entity to send its original programming, receive at least two additional multicast HD/SD streams from any other participating PEG entity,

and allow the transfer of files. Each participating PEG entity is responsible for encoding its own SD/HD content in suitable bit rates to be transported by the video interconnect network without exceeding the 50 Mbps of allocated bandwidth.

7.2 Cable Service to Public Buildings.

Grantee shall, at no cost to the City or Commission, provide Basic Service and Expanded Basic Service (currently Prism Essentials) or equivalent package of Cable Service and necessary reception equipment to up to seven (7) outlets at the Commission Office and at each Member City City Hall and to each Independent School District, except Blaine High School, at the current locations located in the Commission area that originates PEG programming. Grantee shall, at no cost to the City, provide Basic Service and Expanded Basic Service (currently Prism Essentials) or equivalent package of Cable Service and necessary reception equipment to up to three (3) outlets at all other government buildings, schools and public libraries located in the City where Grantee provides Cable Service, so long as these government addresses are designated as a Household and no other cable communications provider is providing complementary service at such location. For purposes of this subsection, “school” means all State-accredited K-12 public, and private schools. Outlets of Basic and Expanded Basic Service provided in accordance with this subsection may be used to distribute Cable Services throughout such buildings; provided such distribution can be accomplished without causing Cable System disruption and general technical standards are maintained. Such outlets may only be used for lawful purposes. Blaine High School will be provided the functionality to monitor PEG signals through a mutually agreeable alternate technology at the expense of the Grantee.

SECTION 8. OPERATION AND ADMINISTRATION PROVISIONS

8.1 Administration of Franchise.

The City’s designated cable television administrator, or his/her designee, shall have continuing regulatory jurisdiction and supervision over the System and the Grantee’s operation under the Franchise. The City may issue such reasonable rules and regulations concerning the construction, operation and maintenance of the System, as are consistent with the provisions of this Franchise and law.

8.2 Delegated Authority.

The City may appoint a citizen advisory body or a joint powers commission, or may delegate to any other body or Person authority to administer the Franchise and to monitor the performance of the Grantee pursuant to the Franchise. The Grantee shall cooperate with any such delegatee of the City.

8.3 Franchise Fee.

- 8.3.1** During the term of the Franchise, the Grantee shall pay quarterly to the City or its delegatee a Franchise fee in an amount equal to five percent (5%) of its Gross Revenues.
- 8.3.2** Any payments due under this provision shall be payable quarterly. The payment shall be made within thirty (30) days of the end of each of Grantee's fiscal quarters together with a report showing the basis for the computation. The City or the Commission shall have the right to require further supporting information for each franchise fee payment.
- 8.3.3** All amounts paid shall be subject to audit and recomputation by City and/or the Commission, and acceptance of any payment shall not be construed as an accord that the amount paid is in fact the correct amount. The Grantee shall be responsible for providing the City and/or the Commission all records necessary to confirm the accurate payment of franchise fees. The Grantee shall maintain such records for five (5) years, unless in the Grantee's ordinary course of business specific records are retained for a shorter period, but in no event less than three (3) years. If an audit discloses an overpayment or underpayment of franchise fees, the City and/or the Commission shall notify the Grantee of such overpayment or underpayment. The City's/Commission's audit expenses shall be borne by the City/Commission unless the audit determines that the payment to the City should be increased by more than five percent (5%) in the audited period, in which case the reasonable costs of the audit shall be borne by the Grantee as a cost incidental to the enforcement of the Franchise. Any additional amounts due to the City as a result of the audit shall be paid to the City within thirty (30) days following written notice to the Grantee by the City/Commission of the underpayment, which notice shall include a copy of the audit report. If the recomputation results in additional revenue to be paid to the City, such amount shall be subject to a ten percent (10%) annual interest charge. If the audit determines that there has been an overpayment by the Grantee, the Grantee may credit any overpayment against its next quarterly payment.
- 8.3.4** In the event any franchise fee payment or recomputation amount is not made on or before the required date, the Grantee shall pay, during the period such unpaid amount is owed, the additional compensation and interest charges computed from such due date, at an annual rate of ten percent (10%).
- 8.3.5** Nothing in this Franchise shall be construed to limit any authority of the City to impose any tax, fee or assessment of general applicability.
- 8.3.6** The franchise fee payments required by this Franchise shall be in addition to any and all taxes or fees of general applicability. The Grantee shall not have or make any claim for any deduction or other credit of all or any part of the amount of said franchise fee payments from or against any of said taxes or fees of general

applicability, except as expressly permitted by law. The Grantee shall not apply nor seek to apply all or any part of the amount of said franchise fee payments as a deduction or other credit from or against any of said taxes or fees of general applicability, except as expressly permitted by law. Nor shall the Grantee apply or seek to apply all or any part of the amount of any of said taxes or fees of general applicability as a deduction or other credit from or against any of its franchise fee obligations, except as expressly permitted by law.

8.4 Access to Records.

To the extent such documents are related to Grantee's compliance with this Franchise or applicable law (the burden to allege and, if so alleged, the initial burden to demonstrate that such requested documents are not related to Grantee's compliance with this Franchise or applicable law shall be the Grantee's), the City/Commission shall have the right to inspect or copy any records or documents maintained by Grantee (or maintained by an Affiliate on behalf of the Grantee, to the extent that review of such record or document maintained by the Affiliate on behalf of the Grantee is necessary in order for the City/Commission to enforce compliance with this Franchise) upon reasonable notice and during Grantee's administrative office hours, or require Grantee to provide copies of records and documents within a reasonable time, on a confidential and proprietary basis, to the extent such records and documents otherwise qualify as nonpublic, confidential, trade secret or proprietary pursuant to applicable law. Upon the City's/Commission's request, the Grantee shall provide to the City and/or the Commission copies of any records or documents that cannot be reasonably argued pursuant to applicable law to be nonpublic, confidential, trade secret or proprietary.

8.5 Reports and Maps to be Filed with City.

- 8.5.1** The Grantee shall file with the City, at the time of payment of the Franchise Fee, a report of all Gross Revenues in a form and substance as required by the City or the Commission.
- 8.5.2** The Grantee shall prepare and furnish to the City or the Commission, at the times and in the form prescribed, such other reports with respect to Grantee's operations pursuant to this Franchise as the City or the Commission may require. The City and the Commission shall use their best efforts to protect proprietary or trade secret information all consistent with State and federal law.
- 8.5.3** If required by the City and/or the Commission, the Grantee shall make available to the City and/or the Commission the maps, plats and permanent records of the location and character of all facilities constructed, including underground facilities, and Grantee shall upon request make available to the City and the Commission updates of such maps, plats and permanent records annually if changes have been made in the System.

8.6 Periodic Evaluation.

- 8.6.1** The City may require evaluation sessions at any time during the term of this Franchise, upon fifteen (15) days written notice to the Grantee.
- 8.6.2** Topics which may be discussed at any evaluation session may include, but are not limited to, application of new technologies, System, programming offered, access channels, facilities and support, municipal uses of cable, Subscriber rates, customer complaints, amendments to this Franchise, judicial rulings, FCC rulings, line extension policies and any other topics the City deems relevant.
- 8.6.3** As a result of a periodic review or evaluation session, upon notification from City, Grantee shall meet with City and undertake good faith efforts to reach agreement on changes and modifications to the terms and conditions of the Franchise which are legally, economically, and technically feasible.

SECTION 9. GENERAL FINANCIAL AND INSURANCE PROVISIONS

9.1 Performance Bond.

- 9.1.1** At the time the Franchise becomes effective and until such time as the construction of the System the Grantee shall furnish a bond to the Commission, in a form and with such sureties as are reasonably acceptable to the Commission, in the amount of \$500,000. Upon such completion of all System the bond shall be reduced to \$50,000. This bond will be conditioned upon the faithful performance by the Grantee of its Franchise obligations and upon the further condition that in the event the Grantee shall fail to comply with any law, ordinance or regulation governing the Franchise, there shall be recoverable jointly and severally from the principal and surety of the bond any damages or loss suffered by the City or the Commission as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the Grantee, plus a reasonable allowance for attorneys' fees and costs, up to the full amount of the bond, and further guaranteeing payment by the Grantee of claims, liens and taxes due the City or the Commission which arise by reason of the construction, operation, or maintenance of the System,. The rights reserved by the City and the Commission with respect to the bond are in addition to all other rights the City and the Commission may have under the Franchise or any other law. The Commission may, from year to year, in its sole discretion, reduce the amount of the bond.
- 9.1.2** The time for Grantee to correct any violation or liability shall be extended by Commission if the necessary action to correct such violation or liability is, in the sole determination of Commission, of such a nature or character as to require more than thirty (30) days within which to perform, provided Grantee provides written notice that it requires more than thirty (30) days to correct such violations

or liability, commences the corrective action within the thirty (30)-day cure period and thereafter uses reasonable diligence to correct the violation or liability.

- 9.1.3** In the event this Franchise is revoked by reason of default of Grantee, City shall be entitled to collect from the performance bond that amount which is attributable to any damages sustained by City as a result of said default or revocation.
- 9.1.4** Grantee shall be entitled to the return of the performance bond, or portion thereof, as remains sixty (60) days after the expiration of the term of the Franchise or revocation for default thereof, provided the City or the Commission has not notified Grantee of any actual or potential damages incurred as a result of Grantee's operations pursuant to the Franchise or as a result of said default.
- 9.1.5** The rights reserved to the City or the Commission with respect to the performance bond are in addition to all other rights of the City and the Commission whether reserved by this Franchise or authorized by law, and no action, proceeding or exercise of a right with respect to the performance bond shall affect any other right the City and the Commission may have.

9.2 Letter of Credit.

- 9.2.1** Within 30 days of the Effective Date of this Franchise, the Grantee shall deliver to the Commission an irrevocable and unconditional Letter of Credit, that is effective as of the Effective Date, in a form and substance acceptable to the Commission, from a National or State bank approved by the Commission, in the amount of \$25,000.00.
- 9.2.2** The Letter of Credit shall provide that funds will be paid to the City upon written demand of the City, and in an amount solely determined by the City in payment for penalties charged pursuant to this Section, in payment for any monies deemed by the City to be owed by the Grantee to the City and/or the Commission, as applicable, after notice and opportunity to pay any such monies, pursuant to its obligations under this Franchise, or in payment for any damage incurred by the City or the Commission as a result of any acts or omissions by the Grantee pursuant to this Franchise.
- 9.2.3** In addition to recovery of any monies owed by the Grantee to the City, or the Commission or damages to the City, the Commission or any Person as a result of any acts or omissions by the Grantee pursuant to the Franchise, the City and/or the Commission in its sole discretion may charge to and collect from the Letter of Credit the following penalties:
 - 9.2.3.1** For failure to timely construction pursuant to Section 2.8 provided in this Franchise, unless the City or the Commission approves the delay, the penalty shall be \$500.00 per day for each day, or part thereof, such failure occurs or continues.

- 9.2.3.2** For failure to provide data, documents, reports or information or to cooperate with City or the Commission during an application process or system review or as otherwise provided herein, the penalty shall be \$250.00 per day for each day, or part thereof, such failure occurs or continues.
- 9.2.3.3** Fifteen (15) days following notice from the City or the Commission of a failure of Grantee to comply with construction, operation or maintenance standards, the penalty shall be \$250.00 per day for each day, or part thereof, such failure occurs or continues.
- 9.2.3.4** For failure to provide the services and the payments required by this Franchise, including, but not limited to, the implementation and the utilization of the PEG Access Channels, the penalty shall be \$250.00 per day for each day, or part thereof, such failure occurs or continues.
- 9.2.3.5** For Grantee's breach of any written contract or agreement with or to the City or the Commission, the penalty shall be \$250.00 per day for each day, or part thereof, such breach occurs or continues.
- 9.2.3.6** For failure to comply with the reasonable build-out provisions and for economic redlining in violation of Section 2.8 and 11.1 and 47 U.S.C. § 541(a)(3): Five Hundred dollars (\$500) per day for each day or part thereof that such violation continues.
- 9.2.3.7** For failure to comply with any of the provisions of this Franchise, or other City ordinance or regulation for which a penalty is not otherwise specifically provided pursuant to this subsection 9.2.3, the penalty shall be \$250.00 per day for each day, or part thereof, such failure occurs or continues.
- 9.2.4** Each violation of any provision of this Franchise shall be considered a separate violation for which a separate penalty can be imposed; provided, however, that Grantee will not be charged under more than one penalty provision for each separate violation.
- 9.2.5** Whenever the City or the Commission determines that the Grantee has violated one or more terms, conditions or provisions of this Franchise, or for any other violation contemplated in subsection 9.2.3 above, a written notice shall be given to Grantee informing it of such violation. At any time after thirty (30) days (or such longer reasonable time which, in the determination of the City or the Commission, is necessary to cure the alleged violation) following local receipt of notice, provided the City or its designee finds that the Grantee remains in violation of one or more terms, conditions or provisions of this Franchise, in the sole opinion of the City or the Commission, the City or the Commission may

draw from the Letter of Credit all penalties and other monies due the City or the Commission from the date of the local receipt of notice.

- 9.2.6** Prior to drawing on the Letter of Credit, the City or the Commission shall give Grantee written notice that it intends to draw, and the Grantee may, within seven (7) days thereafter, notify the City or the Commission in writing that there is a dispute as to whether a violation or failure has in fact occurred. Such written notice by the Grantee to the City or the Commission shall specify with particularity the matters disputed by Grantee. Any penalties shall continue to accrue, but the City or the Commission may not draw from the Letter of Credit during any appeal pursuant to this subparagraph 9.2.6. The City or the Commission shall hear Grantee's dispute within sixty (60) days and the City or the Commission, as appropriate, shall render a final decision within sixty (60) days thereafter. Withdrawal from the Letter of Credit may occur only upon a final decision.
- 9.2.7** If said Letter of Credit or any subsequent Letter of Credit delivered pursuant thereto expires prior to thirty (30) months after the expiration of the term of this Franchise, it shall be renewed or replaced during the term of this Franchise to provide that it will not expire earlier than thirty (30) months after the expiration of this Franchise. The renewed or replaced Letter of Credit shall be of the same form and with a bank authorized herein and for the full amount stated in subsection 9.2.1 of this Section.
- 9.2.8** If the City or the Commission draws upon the Letter of Credit or any subsequent Letter of Credit delivered pursuant hereto, in whole or in part, the Grantee shall replace or replenish to its full amount the same within ten (10) days and shall deliver to the Commission a like replacement Letter of Credit or certification of replenishment for the full amount stated in Section 9.2.1 as a substitution of the previous Letter of Credit. This shall be a continuing obligation for any withdrawals from the Letter of Credit.
- 9.2.9** If any Letter of Credit is not so replaced or replenished, the City or the Commission may draw on said Letter of Credit for the whole amount thereof and use the proceeds as the City or the Commission determines in its sole discretion. The failure to replace or replenish any Letter of Credit may also, at the option of the City or the Commission, be deemed a default by the Grantee under this Franchise. The drawing on the Letter of Credit by the City or the Commission, and use of the money so obtained for payment or performance of the obligations, duties and responsibilities of the Grantee which are in default, shall not be a waiver or release of such default.
- 9.2.10** The collection by the City or the Commission of any damages, monies or penalties from the Letter of Credit shall not affect any other right or remedy available to it, nor shall any act, or failure to act, by the City or the Commission

pursuant to the Letter of Credit, be deemed a waiver of any right of the City or the Commission pursuant to this Franchise or otherwise.

9.3 Indemnification of City.

- 9.3.1** The City and its officers, boards, committees, commissions, elected and appointed officials, employees, volunteers and agents shall not be liable for any loss or damage to any real or personal property of any Person, or for any injury to or death of any Person, arising out of or in connection with Grantee's construction, operation, maintenance, repair or removal of the System, or as to any other action of Grantee with respect to this Franchise.
- 9.3.2** Grantee shall indemnify, defend, and hold harmless the City and its officers, boards, committees, commissions, elected and appointed officials, employees, volunteers and agents from and against all liability, damages and penalties which they may legally be required to pay as a result of the City's or the Commission's exercise, administration or enforcement of the Franchise.
- 9.3.3** Nothing in this Franchise relieves a Person from liability arising out of the failure to exercise reasonable care to avoid injuring the Grantee's facilities while performing work connected with grading, regarding or changing the line of a Right-of-Way or public place or with the construction or reconstruction of a sewer or water system.
- 9.3.4** The Grantee shall not be required to indemnify the City for negligence or misconduct on the part of the City or its officers, boards, committees, commissions, elected or appointed officials, employees, volunteers or agents, including any loss or claims.
- 9.3.5** Grantee shall contemporaneously with this Franchise execute an Indemnity Agreement in the form of **Exhibit A**, which shall indemnify, defend and hold the City and Commission harmless for any claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and reasonable attorneys' fees or reasonable expenses arising out of the actions of the City and/or Commission in granting this Franchise. This obligation includes any claims by another franchised cable operator against the City and/or Commission that the terms and conditions of this Franchise are less burdensome than another franchise granted by the city or that this Franchise does not satisfy the requirements of applicable state law(s).

9.4 Insurance.

- 9.4.1** As a part of the indemnification provided in Section 9.3, but without limiting the foregoing, Grantee shall file with the Commission at the time of its acceptance of this Franchise, and at all times thereafter maintain in full force and effect at its sole expense, a comprehensive general liability insurance policy, including

broadcaster's/cablecaster's liability and contractual liability coverage, in protection of the Grantee, the Commission, the City and its officers, elected and appointed officials, boards, commissions, commissioners, agents, employees and volunteers for any and all damages and penalties which may arise as a result of this Franchise. The policy or policies shall name the City and the Commission as an additional insured, and in their capacity as such, City and Commission officers, elected and appointed officials, boards, commissions, commissioners, agents, employees and volunteers. The broadcaster's/cablecaster's liability coverage specified in this provision shall be subject to Section 9.3 above regarding indemnification of the City.

- 9.4.2** The policies of insurance shall be in the sum of not less than \$1,000,000.00 for personal injury or death of any one Person, and \$2,000,000.00 for personal injury or death of two or more Persons in any one occurrence, \$1,000,000.00 for property damage to any one Person and \$2,000,000.00 for property damage resulting from any one act or occurrence.
- 9.4.3** The policy or policies of insurance shall be maintained by Grantee in full force and effect during the entire term of the Franchise. Each policy of insurance shall contain a statement on its face that the insurer will not cancel the policy or fail to renew the policy, whether for nonpayment of premium, or otherwise, and whether at the request of Grantee or for other reasons, except after sixty (60) days advance written notice have been provided to the Commission. The Grantee shall not cancel any required insurance policy without submission of proof that the Grantee has obtained alternative insurance satisfactory to the City which complies with this Franchise.
- 9.4.4** All insurance policies shall be with sureties qualified to do business in the State of Minnesota, with an A-1 or better rating of insurance by Best's Key Rating Guide, Property/Casualty Edition, and in a form approved by the City.
- 9.4.5** All insurance policies shall be available for review by the City and the Commission, and the Grantee shall keep on file with the Commission certificates of insurance.
- 9.4.6** Failure to comply with the insurance requirements of this Section shall constitute a material violation of this Franchise.

SECTION 10. SALE, ABANDONMENT, TRANSFER AND REVOCAION OF FRANCHISE

10.1 City's Right to Revoke.

- 10.1.1** In addition to all other rights which City has pursuant to law or equity, City reserves the right to commence proceedings to revoke, terminate or cancel this

Franchise, and all rights and privileges pertaining thereto, if it is determined by City that:

10.1.1.1 Grantee has violated material provisions(s) of this Franchise; or

10.1.1.2 Grantee has attempted to evade any of the provisions of the Franchise;
or

10.1.1.3 Grantee has practiced fraud or deceit upon the City or the Commission.

City may revoke this Franchise without the hearing required by Section 10.2.2 herein if Grantee is adjudged a bankrupt.

10.2 Procedures for Revocation.

10.2.1 The City shall provide the Grantee with written notice of a cause for revocation and the intent to revoke and shall allow Grantee thirty (30) days subsequent to receipt of the notice in which to correct the violation or to provide adequate assurance of performance in compliance with the Franchise. In the notice required herein, the City shall provide the Grantee with the basis for revocation.

10.2.2 The Grantee shall be provided the right to a public hearing affording due process before the City Council prior to the effective date of revocation, which public hearing shall follow the thirty (30) day notice provided in subsection 10.2.1 above. The City shall provide the Grantee with written notice of its decision together with written findings of fact supplementing said decision.

10.2.3 Only after the public hearing and upon written notice of the determination by the City to revoke the Franchise may the Grantee appeal said decision with an appropriate state or federal court or agency.

10.2.4 During the appeal period, the Franchise shall remain in full force and effect unless the term thereof sooner expires or unless continuation of the Franchise would endanger the health, safety and welfare of any Person or the public.

10.3 Continuity of Service.

Grantee may not abandon the System or any portion thereof without having first given three (3) months written notice to the City. The Grantee may not abandon the System or any portion thereof without compensating the City for all costs incident to removal of the System if required by the City pursuant to section 10.4.

10.4 Removal After Abandonment, Termination or Forfeiture.

10.4.1 In the event of termination or forfeiture of the Franchise or abandonment of the System, the City shall have the right to require the Grantee to remove all or any

portion of the System from all Rights-of-Way and public property within the City, consistent with Section 3.8 (Removal of Facilities at Expiration of Franchise) herein.

10.4.2 If the Grantee has failed to commence removal of the System, or such part thereof as was designated by the City, within thirty (30) days after written notice of the City's demand for removal is given, or if the Grantee has failed to complete such removal within twelve (12) months after written notice of the City's demand for removal is given, the City shall have the right to apply funds secured by the Letter of Credit and Performance Bond toward removal and/or declare all right, title and interest to the System to be in the City with all rights of ownership including, but not limited to, the right to operate the System or transfer the System to another for operation by it.

10.5 Sale or Transfer of Franchise.

10.5.1 No sale or transfer of the Franchise, or sale, transfer or fundamental corporate change of or in Grantee, including, but not limited to, a fundamental corporate change in Grantee's parent corporation or any entity having a controlling interest in Grantee, the sale of a controlling interest in the Grantee's assets, a merger, including the merger of a subsidiary and parent entity, consolidation or the creation of a subsidiary or affiliate entity, shall take place until a written request has been filed with the City requesting approval of the sale, transfer or corporate change and such approval has been granted or deemed granted, provided, however, that said approval shall not be required where Grantee grants a security interest in its Franchise and/or assets to secure an indebtedness. Upon notice to the City, Grantee may undertake legal changes necessary to consolidate the corporate or partnership structures of its System provided there is no change in the controlling interests which could materially alter the financial responsibilities for the Grantee; provided however, Grantee must seek approval of any transaction constituting a transfer under state law.

10.5.2 Any sale, transfer, exchange or assignment of stock in Grantee, or Grantee's parent corporation or any other entity having a controlling interest in Grantee, so as to create a new controlling interest therein, shall be subject to the requirements of this Section 10.5. The term "controlling interest" as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.

10.5.3 The Grantee shall file, in addition to all documents, forms and information required to be filed by applicable law, the following:

10.5.3.1 All contracts, agreements or other documents that constitute the proposed transaction and all exhibits, attachments or other documents referred to therein which are necessary in order to understand the terms thereof.

- 10.5.3.2** A list detailing all documents filed with any state or federal agency related to the transaction including, but not limited to, the MPUC, the FCC, the FTC, the FEC, the SEC or MnDOT. Upon request, Grantee shall provide City with a complete copy of any such document; and
- 10.5.3.3** Any other documents or information related to the transaction as may be specifically requested by the City
- 10.5.4** The City shall have such time as is permitted by federal law in which to review a transfer request.
- 10.5.5** The Grantee shall reimburse the City and/or the Commission for all the reasonable legal, administrative, and consulting costs and fees associated with the City's/Commission's review of any request to transfer. Nothing herein shall prevent the Grantee from negotiating partial or complete payment of such costs and fees by the transferee. Grantee may not itemize any such reimbursement on Subscriber bills, but may recover such expenses in its Subscriber rates.
- 10.5.6** In no event shall a sale, transfer, corporate change or assignment of ownership or control pursuant to subsections 10.5.1 or 10.5.2 of this Section be approved without the Grantee remaining, or (if other than the current Grantee) transferee becoming a signatory to this Franchise and assuming or continuing to have all rights and obligations hereunder.
- 10.5.7** In the event of any proposed sale, transfer, corporate change or assignment pursuant to subsection 10.5.1 or 10.5.2, the City shall have the right to purchase the System for the value of the consideration proposed in such transaction. The City's right to purchase shall arise upon City's receipt of notice of the material terms of an offer or proposal for sale, transfer, corporate change or assignment, which Grantee has accepted. Notice of such offer or proposal must be conveyed to City in writing and separate from any general announcement of the transaction.
- 10.5.8** The City shall be deemed to have waived its right to purchase the System pursuant to this Section only in the following circumstances:
- 10.5.8.1** If City does not indicate to Grantee in writing, within sixty (60) days of receipt of written notice of a proposed sale, transfer, corporate change or assignment as contemplated in Section 10.5.7 above, its intention to exercise its right of purchase; or
- 10.5.8.2** It approves the assignment or sale of the Franchise as provided within this Section.
- 10.5.9** No Franchise may be transferred if the City and/or the Commission determine the Grantee is in noncompliance of the Franchise unless an acceptable compliance

program has been approved by City or the Commission. The approval of any transfer of ownership pursuant to this Section shall not be deemed to waive any rights of the City or the Commission to subsequently enforce noncompliance issues relating to this Franchise.

10.5.10 Any transfer or sale of the Franchise without the prior written consent of the City shall be considered to impair the City's assurance of due performance. The granting of approval for a transfer or sale in one instance shall not render unnecessary approval of any subsequent transfer or sale for which approval would otherwise be required.

SECTION 11. PROTECTION OF INDIVIDUAL RIGHTS

11.1 Discriminatory Practices Prohibited.

Grantee shall not deny service, deny access, or otherwise discriminate against Subscribers (or group of potential subscribers) or general citizens on the basis of income, race, color, religion, national origin, sex, age, status as to public assistance, affectional preference or disability. Grantee shall comply at all times with all other applicable federal, State and City laws.

11.2. Subscriber Privacy.

11.2.1 No signals, including signals of a Class IV Channel, may be transmitted from a Subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the Subscriber. Such written permission shall be for a limited period of time not to exceed one (1) year which may be renewed at the option of the Subscriber. No penalty shall be invoked for a Subscriber's failure to provide or renew such authorization. The authorization shall be revocable at any time by the Subscriber without penalty of any kind whatsoever. Such permission shall be required for each type or classification of Class IV Channel activity planned for the purpose of monitoring individual viewing patterns or practices.

11.2.2 No lists of the names and addresses of Subscribers or any lists that identify the viewing habits of Subscribers shall be sold or otherwise made available to any party other than to Grantee or its agents for Grantee's service business use or to City for the purpose of Franchise administration, and also to the Subscriber subject of that information, unless Grantee has received specific written authorization from the Subscriber to make such data available. Such written permission shall be for a limited period of time not to exceed one (1) year which may be renewed at the option of the Subscriber. No penalty shall be invoked for a Subscriber's failure to provide or renew such authorization. The authorization shall be revocable at any time by the Subscriber without penalty of any kind whatsoever.

11.2.3 Written permission from the Subscriber shall not be required for the conducting of System wide or individually addressed electronic sweeps for the purpose of verifying System integrity or monitoring for the purpose of billing. Confidentiality of such information shall be subject to the provision set forth in subsection 11.2.2.

SECTION 12. UNAUTHORIZED CONNECTIONS AND MODIFICATIONS

12.1 Unauthorized Connections or Modifications Prohibited.

It shall be unlawful for any firm, Person, group, company, corporation or governmental body or agency, without the express consent of the Grantee, to make or possess, or assist anybody in making or possessing, any unauthorized connection, extension or division, whether physically, acoustically, inductively, electronically or otherwise, with or to any segment of the System or to receive services of the System without Grantee's authorization.

12.2 Removal or Destruction Prohibited.

It shall be unlawful for any firm, Person, group, company or corporation to willfully interfere, tamper with, remove, obstruct, or damage, or assist thereof, any part or segment of the System for any purpose whatsoever, except for any rights the City may have pursuant to this Franchise or its police powers.

12.3 Penalty.

Any firm, Person, group, company or corporation found guilty of violating this section may be fined not less than Twenty Dollars (\$20.00) and the costs of the action nor more than Five Hundred Dollars (\$500.00) and the costs of the action for each and every subsequent offense. Each continuing day of the violation shall be considered a separate occurrence.

SECTION 13. MISCELLANEOUS PROVISIONS

13.1 Franchise Renewal.

Any renewal of this Franchise shall be performed in accordance with applicable federal, State and local laws and regulations.

13.2 Work Performed by Others.

All applicable obligations of this Franchise shall apply to any subcontractor or others performing any work or services pursuant to the provisions of this Franchise, however, in no event shall any such subcontractor or other performing work obtain any rights to maintain and operate the System or provide Cable Service. The Grantee shall provide

notice to the City of the name(s) and address(es) of any entity, other than Grantee, which performs substantial services pursuant to this Franchise.

13.3 Amendment of Franchise Ordinance.

The Grantee and the 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 8.6 or at any other time if the City and the Grantee agree that such an amendment will be in the public interest or if such an amendment is required due to changes in federal, State or local laws. Provided, however, nothing herein shall restrict the City's exercise of its police powers or the City's authority to unilaterally amend Franchise provisions to the extent permitted by law.

13.4 Compliance with Federal, State and Local Laws.

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

13.4.2 In the event that federal or State laws, rules or regulations preempt a provision or limit the enforceability of a provision of this Franchise, the provision shall be read to be preempted to the extent and for the time, but only to the extent and for the time, required or necessitated by law. In the event such federal or State law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the City or the Commission.

13.4.3 If any term, condition or provision of this Franchise or the application thereof to any Person or circumstance (including the City, the Grantee and the Commission) shall, to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition or provision to Persons or circumstances (including the City, the Grantee and the Commission) other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Franchise and all the terms, provisions and conditions hereof shall, in all other respects, continue to be effective and complied with provided the loss of the invalid or unenforceable clause does not substantially alter the agreement between the parties. In the event such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the

provision which had been held invalid or modified is no longer in conflict with the law, rules and regulations then in effect, said provision shall thereupon return to full force and effect and shall thereafter be binding on Grantee and City without further action by the City.

13.4.4 The City and the Grantee shall, at all times during the term of this Franchise, including all extensions and renewals hereof, comply with applicable federal, State and local laws and regulations.

13.5 Nonenforcement by City.

Grantee shall not be relieved of its obligations to comply with any of the provisions of this Franchise by reason of any failure or delay of City to enforce prompt compliance. City may only waive its rights hereunder by expressly so stating in writing. Any such written waiver by City of a breach or violation of any provision of this Franchise shall not operate as or be construed to be a waiver of any subsequent breach or violation.

13.6 Rights Cumulative.

All rights and remedies given to City and the Commission by this Franchise or retained by City or the Commission herein shall be in addition to and cumulative with any and all other rights and remedies, existing or implied, now or hereafter available to the City and the Commission, at law or in equity, and such rights and remedies shall not be exclusive, but each and every right and remedy specifically given by this Franchise or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by the City and the Commission and the exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy.

13.7 Grantee Acknowledgment of Validity of Franchise.

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

13.8 Force Majeure.

The Grantee shall not be deemed in default of provisions of this Franchise or the City Code where performance was rendered impossible by war or riots, labor strikes or civil disturbances, floods or other causes beyond the Grantee's control, and the Franchise shall not be revoked or the Grantee penalized for such noncompliance, provided that the Grantee, when possible, takes immediate and diligent steps to bring itself back into compliance and to comply as soon as possible, under the circumstances, with the Franchise without unduly endangering the health, safety and integrity of the Grantee's

employees or property, or the health, safety and integrity of the public, the Rights-of-Way, public property or private property.

13.9 Governing Law.

This Franchise shall be governed in all respects by the laws of the State of Minnesota.

13.10 Captions and References.

13.10.1 The captions and headings of sections throughout this Franchise are intended solely to facilitate reading and reference to the sections and provisions of this Franchise. Such captions shall not affect the meaning or interpretation of this Franchise.

13.10.2 When any provision of the City Code is expressly mentioned herein, such reference shall not be construed to limit the applicability of any other provision of the City Code that may also govern the particular matter in question.

13.11 Rights of Third Parties.

This Franchise is not intended to, and shall not be construed to, grant any rights to or vest any rights in third parties, unless expressly provided herein.

13.12 Merger of Documents.

This Franchise, and the attachments hereto, constitute the entire Franchise agreement between the City and the Grantee, and supersede all prior oral or written franchises, drafts and understandings.

SECTION 14. PUBLICATION EFFECTIVE DATE; ACCEPTANCE AND EXHIBITS

14.1 Publication.

This Franchise shall be published in accordance with applicable local and Minnesota law.

14.2 Acceptance.

14.2.1 Grantee shall accept this Franchise within sixty (60) days of its enactment by the City Council and the enactment of a Franchise on substantially similar terms by the other member municipalities of the Commission, unless the time for acceptance is extended by the City. Such acceptance by the Grantee shall be deemed the grant of this Franchise for all purposes; provided, however, this Franchise shall not be effective until all City ordinance adoption procedures are complied with and all applicable timelines have run for the adoption of a City ordinance. In the event acceptance does not take place, or should all ordinance

adoption procedures and timelines not be completed, this Franchise and any and all rights granted hereunder to the Grantee shall be null and void.

14.2.2 Upon acceptance of this Franchise, the Grantee and the City shall be bound by all the terms and conditions contained herein. The Grantee agrees that this Franchise is not inconsistent with applicable law or regulations at the time it is executed.

14.2.3 Grantee shall accept this Franchise in the following manner:

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

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

14.3 Binding Acceptance.

This Franchise shall bind and benefit the parties hereto and their respective authorized heirs, beneficiaries, administrators, executors, receivers, trustees, successors and assigns.

Passed and adopted this _____ day of _____, 2015.

Attest:

CITY OF BLAINE, MINNESOTA

By: _____

By: _____

Its: _____

Its: _____

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

QWEST BROADBAND SERVICES, INC.,
DBA CENTURYLINK

Dated: _____

By: _____

Its: _____

EXHIBIT A INDEMNITY AGREEMENT

INDEMNITY AGREEMENT made this ____ day of _____, 2015, by and between Qwest Broadband Services, Inc., a Delaware Corporation, party of the first part, hereinafter called "CenturyLink," and the City of _____, a Minnesota Municipal Corporation, party of the second part, hereinafter called "City" and the North Metro Telecommunications Commission, a Minnesota Municipal Joint Powers entity, hereinafter called "Commission."

WITNESSETH:

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

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

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

The City or Commission shall give CenturyLink reasonable notice of the making of any claim or the commencement of any action, suit or other proceeding covered by this agreement. The City and Commission shall cooperate with CenturyLink in the defense of any such action, suit or other proceeding at the request of CenturyLink. The City and Commission may participate in the defense of a claim, but if CenturyLink provides a defense at CenturyLink's expense then CenturyLink shall not be liable for any attorneys' fees, expenses or other costs that City or Commission may incur if it chooses to participate in the defense of a claim, unless and until separate representation is required. If separate representation to fully protect the interests of both parties is or becomes necessary, such as a conflict of interest, in accordance with the

Minnesota Rules of Professional Conduct, between the City or the Commission and the counsel selected by CenturyLink to represent the City and/or the Commission, Century Link shall pay, from the date such separate representation is required forward, all reasonable expenses incurred by the City or the Commission in defending itself with regard to any action, suit or proceeding indemnified by CenturyLink. Provided, however, that in the event that such separate representation is or becomes necessary, and City or the Commission desires to hire a counselor any other outside experts or consultants and desires CenturyLink to pay those expenses, then City and/or the Commission shall be required to obtain CenturyLink's consent to the engagement of such counsel, experts or consultants, such consent not to be unreasonably withheld. Notwithstanding the foregoing, the parties agree that the City or Commission may utilize at any time, at its own cost and expense, its own attorney or outside counsel with respect to any claim brought by another franchised cable operator as described in this agreement.

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

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

**QWEST BROADBAND SERVICES,
INC.**

Dated: _____, 2015

By: _____

Its: _____

STATE OF LOUISIANA

PARISH OF OUACHITA

The foregoing instrument was acknowledged before me this _____ day of 2015, by _____, the _____ of Qwest Broadband Services, Inc., a Delaware Corporation, on behalf of the corporation.

NOTARY PUBLIC

Print Name: _____
Bar Roll #/Notary ID #: _____
My Commission Expires: _____

CITY OF _____

By _____
Its: _____

Department Head Responsible
For Monitoring Contract

Approved as to form:

Assistant City Attorney

**NORTH METRO TELECOMMUNICATIONS
COMMISSION**

By: _____
Its: _____