

# **CABLE FRANCHISE ORDINANCE**

**CITY OF COLUMBUS, MINNESOTA**

**OCTOBER 25, 2013**

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**ORDINANCE NO. \_\_\_\_\_**

AN ORDINANCE GRANTING A FRANCHISE TO MIDCONTINENT COMMUNICATIONS TO CONSTRUCT, OPERATE, AND MAINTAIN A CABLE SYSTEM IN THE CITY OF COLUMBUS, MINNESOTA; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM; AND PRESCRIBING PENALTIES FOR THE VIOLATION OF ITS PROVISIONS.

The City Council of the City of Columbus, Minnesota ordains.

**STATEMENT OF INTENT AND PURPOSES**

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

**FINDINGS**

In the review of the request for renewal by Grantee and negotiations related thereto, and as a result of a public hearing, the City Council makes the following findings:

1. Grantee's technical ability, financial condition, legal qualifications, and character were considered and approved in a full public proceeding after due notice and a reasonable opportunity to be heard;
2. Grantee's plans for constructing and operating the Cable System were considered and found adequate and feasible in a full public proceeding after due notice and a reasonable opportunity to be heard;
3. The Franchise granted to Grantee by City complies with the existing applicable State statutes, federal laws and regulations; and
4. The Franchise granted to Grantee is nonexclusive.

**SECTION 1. SHORT TITLE AND DEFINITIONS**

1. Short Title. This Franchise shall be known and cited as the Cable Franchise Ordinance.
2. Definitions. For the purposes of this Franchise, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory. The word "may" is directory and discretionary and not mandatory.
  - (a) "Actual Cost" means Grantee's cost without any increase due to interest or profit.

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

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

(d) “Cable Programming Service” means any video programming provided over a Cable System, regardless of Service tier, including Installation or rental of equipment used for the receipt of such video programming, other than:

- (1) Video programming carried on the Basic Cable Service tier;
- (2) Video programming offered on a pay-per-channel or pay-per-program basis; or
- (3) A combination of multiple channels of pay-per-channel or pay-per-program video programming offered on a multiplexed or time-shifted basis so long as the combined service:
  - a. consists of commonly-identified video programming; and
  - b. is not bundled with any regulated tier of service.

Cable Programming Service as defined herein shall not be inconsistent with the definition as set forth in 47 U.S.C. § 543(l)(2) (1993) and 47 C.F.R. 76.901(b) (1993).

(e) “Cable Service” or “Service” means:

- (1) The one-way transmission to Subscribers of (i) video programming, or (ii) other programming service; and
- (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

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

- (1) A facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;
- (2) A facility that serves Subscribers without using any public rights-of-way;
- (3) A facility of a common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. §§ 201-226, except that such facility shall be considered a

Cable System (other than for purposes of 47 U.S.C. § 541) to the extent such facility is used in the transmission of video programming directly to Subscribers; unless the extent of such use is solely to provide interactive on-demand services;

(4) An open video system that complies with 47 U.S.C. § 573; or

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

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

(h) “City” means the City of Columbus, Minnesota as represented by the Council. The City Administrator shall be responsible for the continuing administration of the Franchise.

(i) “City Code” means the Municipal Code of Columbus Minnesota.

(j) “Class IV Cable Communications Channel” means a signaling path provided by a Cable System to transmit signals of any type from a Subscriber terminal to another point in the System.

(k) “Commission” means the Forest Lake Cable Commission or its successors or delegations, including representatives of the Member Cities as may exist pursuant to a then valid and existing Joint and Cooperative Agreement between Member Cities.

(l) “Converter” means an electronic device which converts signals to a frequency acceptable to a television receiver of a Subscriber and by an appropriate selector permits a Subscriber to view all Subscriber signals included in the service.

(m) “Council” means the City Council of the City of Columbus, Minnesota.

(n) “Drop” means the cable that connects the ground block on the Subscriber’s residence to the nearest Feeder Cable of the System.

(o) “FCC” means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.

(p) “Feeder Cable” means coaxial cables that run along Streets within the served area and connects between the individual Taps which serve the Drops.

(q) “Franchise” or “Cable Franchise” means this Franchise and the regulatory and contractual relationship established hereby.

(r) “Franchise Fee” means any tax, fee or assessment of any kind imposed by the City or any other Governmental Authority on a Grantee or cable Subscriber, or both, solely because of their status as such. The term “Franchise Fee” does not include: (i) any

tax, fee or assessment of general applicability (including any such tax, fee or assessment imposed on both utilities and cable operators or their services but not including a tax, fee, or assessment which is unduly discriminatory against cable operators or cable subscribers); (ii) capital costs which are required by the Franchise to be incurred by the Grantee for PEG access facilities; (iii) requirements or charges incidental to the awarding or enforcing of the Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties or liquidated damages; or (iv) any fee imposed under Title 17 of the United States Code.

(s) “Governmental Authority” means any court or other federal, state, county, municipal or other governmental department, commission, board, agency or instrumentality.

(t) “Grantee” is Midcontinent Communications, its agents and employees, lawful successors, transferees or assignees.

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

(v) “Installation” means the connection of the System from Feeder Cable to the point of connectivity.

(w) “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.

(x) “Member Cities” means those municipalities which are members of the Commission.

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

- (z) “Normal Operating Conditions” means those service conditions which are within the control of the Grantee. Those conditions which are not within the control of the Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the System.
- (aa) “Pay Television” means the delivery over the System of pay-per-channel or pay-per-program audio-visual signals to Subscribers for a fee or charge, in addition to the charge for Basic Cable Service or Cable Programming Services.
- (bb) “PEG” means public, educational and governmental. Reference to “access channels” shall mean “PEG Access Channels.”
- (cc) “Person” means any individual or any association, firm, general partnership, limited partnership, joint stock company, joint venture, trust, corporation, limited liability company or other legally recognized entity, private or public, whether for-profit or not-for-profit.
- (dd) “Service Area” means the entire geographic area within the City as it is now constituted or may in the future be constituted.
- (ee) “Service Interruption” means the loss of picture or sound on one (1) or more Cable Channels.
- (ff) “Standard Installation” means any residential Installation which can be completed using a Drop of two hundred (200) feet or less.
- (gg) “State” means the State of Minnesota.
- (hh) “Street” means any street, alley, other land or waterway, dedicated or commonly used for utility purposes, including general or utility easements in which the City has the right and authority to authorize, regulate or permit the location of facilities other than those of the City. “Street” shall not include any real or personal City property that is not specifically described in the previous sentence and shall not include City buildings, fixtures, and other structures or improvements, regardless of whether they are situated in the public right-of-way.
- (ii) “Subscriber” means any Person who lawfully elects to subscribe to Cable Service via the System. In the case of multiple office buildings or multiple dwelling units, the “Subscriber” means the lessee, tenant or occupant.
- (jj) “Tap” means a device which connects a Drop to the Feeder Cable.

## **SECTION 2. GRANT OF AUTHORITY AND GENERAL PROVISIONS**

1. Franchise Required. It shall be unlawful for any Person to construct, operate or maintain a Cable System or to offer Cable Service in City unless such Person or the Person for whom such action is being taken shall have first obtained and shall currently hold a valid franchise. The City shall at all times comply with the Minnesota level playing field statute at Minn. Stat. Section 238.08 and any other applicable State or federal level playing field requirements.

2. Grant of Franchise. This Franchise is granted pursuant to the terms and conditions of the Franchise and the terms and conditions outlined below.

3. Grant of Nonexclusive Authority.

(a) The Grantee shall have the right and privilege to construct, erect, operate, and maintain, in, upon, along, across, above, over and under the Streets, alleys, public ways and public places now laid out or dedicated and all extensions thereof, and additions thereto in City, poles, wires, cables, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation in City of a Cable System as herein defined. The Cable System constructed and maintained by Grantee or its agents shall not interfere with other uses of Streets. Grantee shall make use of existing poles and other facilities available to Grantee to the extent it is commercially reasonable to do so.

(b) Grantee shall have the authority to use City easements, public rights-of-way, Streets and other conduits for the distribution of Grantee's System. The City may require all developers of future subdivisions to allow and accommodate the construction of the System as part of any provisions for utilities to serve such subdivisions.

(c) This Franchise shall be nonexclusive, and City specifically reserves the right to grant, at any time, such additional franchises for a Cable System as it deems appropriate subject to Applicable Laws. The City also specifically reserves the right to operate a municipal Cable System pursuant to Applicable Laws.

(d) The terms of this Franchise shall define the contractual rights and obligations of Grantee with respect to the provision of Cable Service and operation of the Cable System in City and may only be amended by the mutual consent of the City and Grantee. The Grantee, through this Franchise, is granted the right to construct, maintain and operate its Cable System using the Streets within the City in compliance with the City Code, ordinance or any regulation of City, as may be amended periodically. The Grantee specifically agrees to comply with the lawful and nondiscriminatory provisions of the City Code, ordinance or any regulation of City, and the applicable, nondiscriminatory regulations of the City. Subject to the police power exception below, in the event of a conflict between A) the lawful, nondiscriminatory provisions of the City Code, ordinance, or applicable nondiscriminatory regulations of the City and B) this Franchise, the express provisions of this Franchise shall govern.

(e) Subject to express federal and State preemption, the material terms and conditions contained in this Franchise may not be unilaterally altered by the City through subsequent amendments to the City Code, ordinances or any regulation of City, except in the lawful

exercise of City's police power. Grantee reserves all rights it may have to challenge any modifications to the City Code, ordinance or any regulation of City, whether arising in contract or at law. The City reserves all of its rights and defenses to such challenges whether arising in contract or at law.

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

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

(h) The City and Grantee acknowledge that the City is currently a party to the August 24, 2007 Forest Lake Cable Commission Joint and Cooperative Agreement (“JPA”). The Grantee shall honor any lawful delegation of authority contained in the JPA. Notwithstanding anything in the JPA to the contrary, the right of enforcement of the obligations of this Franchise are set forth in Section 8 herein and shall not be altered by the City or Commission during the term of this Franchise without the Grantee’s consent.

4. Franchise Term. This Franchise shall be in effect for a period of fifteen (15) years from the date of acceptance by Grantee, unless renewed, revoked or, terminated sooner as herein provided.

5. Previous Franchises. Upon acceptance by Grantee as required by Section 12 herein, this Franchise shall supersede and replace Ordinance No. 98-3 passed or adopted March 25, 1998, granting a Franchise to Grantee to own, operate and maintain a Cable System within City.

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 obligation under this Franchise 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, City, or any other body having lawful jurisdiction thereof.

7. Territorial Area Involved.

(a) This Franchise is granted for the Service Area. In the event of annexation by City, or as development occurs, any new territory shall become part of the Service Area, provided, however, that Grantee shall not be required to extend Cable Service beyond its present System boundaries unless there is a density equivalent of six (6) dwelling units per one-quarter cable mile, as measured from the closest technically feasible Tap on the Cable System.

(b) Access to Cable Service shall not be denied to any group of potential residential cable Subscribers because of the income of the residents of the area in which such group resides. Grantee shall complete the installation as soon as possible considering weather conditions (frozen ground). Grantee shall be given twelve (12) months to construct and activate cable plant to service annexed or newly developed areas which meets the line extension criteria established in this section.

(c) Any residential unit located within two hundred (200) feet from the closest technically feasible Tap shall be connected to the Cable System at no charge other than the Standard Installation charge. After Service has been established by activating trunk and/or distribution cables which are within two hundred (200) feet from the closest technically feasible Tap for a requesting Subscriber, Grantee shall provide Cable Service to any requesting Subscriber within that Service Area within thirty (30) days from the date of request, provided that the Grantee is able to secure all rights-of-way necessary to extend Service to such Subscriber within such thirty (30) day period on reasonable terms and conditions.

(d) If a Subscriber requires a non-Standard Installation (*e.g.* a Drop in excess of two hundred (200) feet), Grantee shall, upon request, provide a quote for construction of the non-Standard Installation and shall establish a mutually acceptable payment schedule not to exceed one (1) calendar year. For residential Installations only, Grantee shall be responsible for all costs of the Standard Installation and the Subscriber shall be responsible for one half (1/2) of the Actual Cost of any construction required beyond the cost of the Standard Installation; Grantee shall be responsible for the balance of the costs for the non-Standard Installation.

(e) Where the density equivalent is less than of six (6) dwelling units per one-quarter cable mile, as measured from the closest technically feasible Tap on the Cable System, the City may request that Grantee provide the City with a free written estimate of the Actual Cost of any required construction. Such written request will be provided to City within thirty (30) days of such request. If the City so elects in its sole discretion, the City and Grantee, on mutually agreeable terms, may agree that Grantee shall complete construction to a specified area where the density is below six (6) dwelling units per one-quarter cable mile so long as the City is willing to be responsible for one half (1/2) of the Actual Cost of any construction. The City and Grantee agree to work cooperatively to share work orders and related written materials necessary to allow verification of the cost sharing set forth in this paragraph.

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 (i) personally to any officer of Grantee or City's Administrator of this Franchise, or (ii) 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, or (iii) on the next business day if sent by express mail or nationally recognized overnight air courier addressed to the party to whom notice, report or demand is being given, in each case, as follows:

If to City: City of Columbus  
Attn: City Administrator  
16319 Kettle River Blvd.  
Columbus, MN 55025

If to Company: Midcontinent Communications  
Ms. Nancy Vogel  
Director of Regulatory Finance  
Midcontinent Communications  
3901 North Louise Avenue  
Sioux Falls, SD 57107

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

9. Drops to Public Buildings.

(a) Grantee shall continue to provide Installation of one (1) Drop, one (1) cable outlet, and monthly Basic Cable Service (Note: as of the Effective Date Grantee refers to the Basic Cable Service tier as “Limited Basic”) and the next highest penetrated level of Service generally available to all Subscribers (Note: as of the Effective Date Grantee refers to the next highest penetrated level of Service as “Basic Cable”), and, if applicable, one (1) Converter or similar terminal equipment necessary to receive such Cable Services without charge (“Complimentary Service”) to those institutions designated in Exhibit A, attached hereto and made a part hereof, and such other public or educational institutions located within two hundred (200) feet of the System which City may designate in writing to Grantee. Upon request and consistent with the timeframes established in Section 2.9.(c), Grantee will provide Complimentary Service to those institutions on Exhibit A that do not currently receive such service.

(b) Grantee shall provide program origination capability, which shall be defined as an activated two-way fiber connection and laser transmitters to those public institutions designated in Exhibit B, attached hereto and made a part hereof. Grantee shall complete construction of the fiber connections to Scandia and Columbus City Halls within 12 months of the Effective Date of this Franchise and shall complete construction to the new Forest Lake City Center on a schedule to be mutually determined with the City of Forest Lake.

(c) Redistribution of the Complimentary Service provided pursuant to this section shall be allowed. Additional Drops and/or outlets in any of the above locations will be provided by Grantee at the cost of Grantee’s time and material. Alternatively, at the institution’s request, said institution may add outlets at its own expense, as long as such Installation meets Grantee’s technical standards and provided that any fees for additional equipment (such as Converters) are paid by the requesting location. Nothing herein shall be construed as requiring Grantee to extend the System to serve additional institutions as may be designated by City except as provided above. Grantee shall have twelve (12)

months from the date of City Council designation of additional institution(s) to complete construction of the Complimentary Service, subject to weather related issues and Grantee's access to any necessary rights of ways, easements and the public building on reasonable terms and conditions.

10. Emergency Alert System. At all times during the term of this Franchise, the Grantee shall provide and maintain an Emergency Alert System (EAS) consistent with applicable Federal law and regulation including 47 C.F.R., Part 11.

### **SECTION 3. CONSTRUCTION STANDARDS**

1. Construction Standards. Subject to Section 2.7 herein, if the System, or subsequent rebuilds or extensions, proposed for the Franchise Area consist of fewer than one hundred (100) plant miles of cable and subject to the terms of this Franchise:

- (a) Within ninety (90) days of the granting of the Franchise, the Grantee shall apply for the necessary governmental permits, licenses, certificates, and authorizations;
- (b) The energized trunk cable must be extended substantially throughout the Service Area within one (1) year after receipt of the necessary governmental permits, licenses, certificates, and authorizations and the Persons along the route of the energized cable shall have individual Drops as desired during the same period of time; and
- (c) The above-stated requirements may be waived by City only upon occurrence of acts beyond the reasonable control of Grantee or acts of God.

2. Construction Codes and Permits.

- (a) Grantee shall obtain and pay for all necessary permits from City before commencing any construction upgrade or extension of the System, including the opening or disturbance of any Street, or private or public property within City but excluding any permit fees for Drops. Grantee shall strictly adhere to all State and local laws, the City Code, ordinance or any regulation of City, and building and zoning codes currently or hereafter applicable to construction, operation or maintenance of the System in City and give due consideration at all times to the aesthetics of the property.
- (b) Consistent with applicable City Code requirements governing Street occupants, the City shall have the right to inspect all construction or Installation work performed pursuant to the provisions of the Franchise and to make such tests at its own expense as it shall find necessary to ensure compliance with the terms of the Franchise and Applicable Law.

3. Repair of Streets and Property. Any and all Streets or public property or private property, which are disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance or reconstruction of the System shall be promptly and fully restored by Grantee, at its expense, to a condition as good as that prevailing prior to Grantee's work, consistent with applicable City Code . If Grantee shall fail to promptly perform the restoration

required herein, City shall have the right to pursue such remedies as are provided for in its City Code.

4. Conditions on Street Use.

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

(b) Consistent with applicable City Code, all System transmission and distribution structures, lines and equipment erected by the Grantee within City shall be located so as not to obstruct or interfere with the proper use of Streets, alleys and other public ways and places, and to cause minimum interference with the rights of property owners who abut any of the said Streets, alleys and other public ways and places, and not to interfere with existing public utility installations. The Grantee shall furnish to and file with City the strand maps of the System including location of underground facilities, and Grantee shall also file updates of such maps, plats and permanent records annually if changes have been made in the System.

(c) Consistent with applicable City Code, if at any time during the period of this Franchise City shall elect to alter, or change the grade or location of any Street, alley or other public way, the Grantee shall, at its own expense, upon reasonable notice by City, remove and relocate its poles, wires, cables, conduits, manholes and other fixtures of the System, and in each instance comply with the standards and specifications of City. If public funds are available to any company using such Street, easement, or right-of-way for the purpose of defraying the cost of any of the foregoing, such funds shall also be made available to the Grantee on a proportionate basis.

(d) In those areas of the City where Grantee's cables are located on the above-ground transmission or distribution facilities of the public utility providing telephone or electric power service, and in the event that the facilities of both such public utilities subsequently are placed underground, then the Grantee likewise shall construct, operate and maintain its transmission and distribution facilities underground, at Grantee's cost. Certain of Grantee's equipment, such as pedestals, amplifiers and power supplies, which normally are placed above ground, may continue to remain in above-ground closures.

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

(f) Nothing contained in this Franchise shall relieve any Person from liability arising out of the failure to exercise reasonable care to avoid injuring Grantee's facilities.

5. Undergrounding of Cable.

(a) Grantee shall be granted access to any easements granted to a public utility, municipal utility or utility district in any areas annexed by City or new developments.

(b) In those areas of the City where transmission or distribution facilities of all the public utilities providing telephone and electric power service are underground, the Grantee likewise shall construct, operate and maintain its transmission and distribution facilities therein underground.

6. Erection, Removal and Joint Use of Poles. No poles, conduits, or other wire-holding structures shall be erected or installed by the Grantee without prior approval of City with regard to location, height, type and other pertinent aspects.

7. Trimming of Trees. Grantee shall have the authority to trim trees, in accordance with all applicable utility restrictions, ordinance and easement restrictions, upon and hanging over Streets and public places of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of Grantee. City representatives shall have authority to supervise and approve all trimming of trees conducted by Grantee except in cases of emergency where advance notification of required tree trimming may not be possible.

#### **SECTION 4. DESIGN PROVISIONS**

1. Minimum Channel Capacity. Grantee shall maintain the System to provide a minimum capacity of 750 MHz which is capable of delivering at least eighty (80) Channels of programming. Grantee shall construct, install, operate and maintain its System in a manner consistent with all Applicable Laws and the FCC technical standards. In addition, the Grantee shall provide to the City, upon request, a written report of the results of the Grantee's periodic proof of performance tests conducted pursuant to FCC standards and guidelines.

(a) Repeated and verified failure to maintain specified technical standards shall constitute a material breach of the Franchise.

(b) All construction practices shall be in accordance with all applicable sections of the Occupational Safety and Health Act of 1970, as amended, as well as all other Applicable Laws.

(c) All Installation of electronic equipment at the time of installation shall be of a permanent nature, durable and installed in accordance with the provisions of the National Electrical and Safety Code and National Electrical Code, as amended, and as said code may from time to time be amended.

(d) Antennae and their supporting structures (towers) shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other Applicable Laws.

(e) All programming decisions remain the sole discretion of Grantee subject to City's rights pursuant to 47 U.S.C. § 545. Grantee shall comply with federal law regarding notice to City and Subscribers prior to any Channel additions, deletions, or realignments, subject to City's rights pursuant to 47 U.S.C. § 545.

2. Technical Standards. The technical standards used in the operation of the System shall comply, at minimum, with the technical standards promulgated by the FCC relating to Cable Systems pursuant to the FCC's rules and regulations and found in Title 47, Section 76.601 to 76.617, as may be amended or modified from time to time, which regulations are expressly incorporated herein by reference.

3. Special Testing. City may require special testing of a location or locations within the System if there is a particular matter of controversy or unresolved complaints pertaining to such location(s). Demand for such special tests may be made on the basis of complaints received or other evidence indicating an unresolved controversy or noncompliance. Such tests shall be limited to the particular matter in controversy or unresolved complaints. The City shall endeavor to so arrange its request for such special testing so as to minimize hardship or inconvenience to Grantee or to the Subscribers caused by such testing. Before ordering such tests, Grantee shall be afforded thirty (30) days to correct problems or complaints upon which tests were ordered. The City shall meet with Grantee prior to requiring special tests to discuss the need for such and, if possible, visually inspect those locations which are the focus of concern. If, after such meetings and inspections, City wishes to commence special tests and the thirty (30) days have elapsed without correction of the matter in controversy or unresolved complaints, the tests shall be conducted by a qualified engineer selected by City. In the event that special testing is required by City to determine the source of technical difficulties, the cost of said testing shall be borne by the Grantee if the testing reveals the System does not meet FCC technical specifications. If the testing reveals the System does meet FCC technical standards, then the cost of said test shall be borne by City.

4. FCC Reports. Upon request, the results of tests required to be filed by Grantee with the FCC shall also be copied to the City and located in Grantee's public file.

5. Nonvoice Return Capability. Grantee is required to use cable having the technical capacity for nonvoice return communications.

6. Lockout Device. Upon the request of a Subscriber, Grantee shall provide by sale or lease a Lockout Device.

## **SECTION 5. SERVICE PROVISIONS**

1. Regulation of Rates. The City reserves the right to regulate rates for Basic Cable Service and any other services offered over the Cable System, to the extent not prohibited by Applicable Laws. The Grantee shall be subject to the rate regulation provisions provided for herein, and those of the Federal Communications Commission (FCC) at 47 C.F.R., Part 76, Subpart N, as the same may be amended from time to time. The City shall follow the rules relating to cable rate regulation promulgated by the FCC at 47 C.F.R., Part 76, Subpart N, as the same may be amended from time to time.

2. Sales Procedures. Grantee shall not exercise deceptive sales procedures when marketing its Cable Services within City. Grantee shall have the right to market its Cable Services door-to-door during reasonable hours consistent with local ordinances and regulation.
3. Customer Service Provisions. The Grantee shall comply with the standards and requirements for customer service set forth in Exhibit C throughout the term of this Franchise.
4. Customer Drop-Off Locations. Grantee agrees to maintain a local drop box for receiving Subscriber payments and Grantee agrees to either maintain or arrange for a location where equipment can be dropped off or exchanged as is necessary or, in the alternative, establish a system for having the equipment returned free of charge.
5. Subscriber Inquiry and Complaint Procedures. Subject to the privacy provisions of 47 U.S.C. § 521 et seq. (1993), City and Grantee shall prepare and maintain written records of all complaints made to them and the resolution of such complaints, including the date of such resolution. Such written records shall be on file at the office of Grantee. Grantee shall upon request by City or Commission provide the City or Commission with a written summary of such complaints and their resolution on a bi-annual basis.
6. Subscriber Contracts. Grantee shall submit any Subscriber contract utilized to City. If no written contract exists, Grantee shall file with the City or Commission a document completely and concisely stating the terms of the residential Subscriber contract offered to customers, specifically including the length of the Subscriber contract. The length and terms of any Subscriber contract shall be available for public inspection during Normal Business Hours.
7. Refund Policy. In the event a Subscriber established 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.

## **SECTION 6. PUBLIC ACCESS PROVISIONS**

1. Public, Educational and Governmental Access.
  - (a) Unless otherwise directed in writing by the City subject to the requirements of Section 2.3(h) herein, the Commission is hereby designated to operate, administer, promote, and manage access (public, educational, and governmental programming) (hereinafter "PEG Access") to the Cable System established pursuant to this Section 6. Grantee shall have no responsibility whatsoever for PEG access except as expressly stated in this Section 6 or by a written agreement between the City or Commission and the Grantee.
  - (b) Grantee shall continue to dedicate two (2) Channels for PEG Access use on the System. The two (2) PEG Access Channels are active as of the Effective Date of this Franchise ("Primary PEG Channels"). Subject to the Commission's demonstrated compliance with the standards established by Minn. Stat. §238.084, Subd. 1(z) (repeated in Section 6.1(g) herein), the Commission shall have the right to require a third (3<sup>rd</sup>) PEG

Channel on the System upon ninety (90) days prior written notice from the Commission to the Grantee. Before a third PEG Channel may be required of Grantee, the Commission shall hold a public hearing at which time all interested parties may review the then current usage of the Primary PEG Channels. The Grantee shall have an opportunity to present information at such hearing, if desired. The final decision regarding the requirement of a third PEG Channel shall be in the Commission's sole discretion (or in the City's sole discretion if the City is no longer a Member City of the JPA).

(c) Grantee shall endeavor to maintain the Primary PEG Channels on Channel 10 and Channel 20 so long as possible. Grantee shall provide City and all Subscribers with at least ninety (90) days prior written notice of any relocation of any PEG Access Channel to a different Channel number. The PEG Channels will be located reasonably close in proximity to other broadcast Channels and/or other public interest Channels such as CSPAN, PBS and related content; if this is not feasible as demonstrated by Grantee to the satisfaction of the City, Grantee shall work with the City to determine placement of Access Channels that is equitable to Channel assignment obligations in this Section 6.1(c). The City shall consider the evolving interactive guides and navigation features available on a Subscriber's set-top unit that may make Channel number assignments and placement less important in the future, as viewers may find Access Programming through a search function. Grantee agrees not to encrypt the PEG Channels any differently than other commercial channels available on the Cable System.

(d) All residential Subscribers who receive all or any part of the total services offered on the System shall be eligible to receive all of said Primary PEG Access Channels at no additional charge beyond the charge imposed for the Basic Cable Service tier (as of the effective date referred to as "Limited Basic").

(e) In the event any Primary PEG Access Channel is relocated, Grantee shall provide promotional spots, on a run of schedule basis, on the System valued at Seven Thousand and No/100 Dollars (\$7,000.00) to promote the new Channel location. In addition, Grantee shall also inform Subscribers of the new PEG Channel location.

(f) No charges may be made by the Grantee for Channel time or playback of prerecorded programming on the PEG Access Channels required by this section. Personnel, equipment, and production costs may be assessed, however, for live studio presentations exceeding five (5) minutes in length. Charges for those production costs and fees for use of other PEG Access Channels must be consistent with the goal of affording the public a low-cost means of television access.

(g) Whenever the PEG Access Channels, are in use during eighty percent (80%) of the weekdays, Monday to Friday, for eighty percent (80%) of the time during any consecutive three (3) hour period for six (6) weeks running, and there is demand for use of an additional channel for the same purpose, the Grantee shall then have six (6) months in which to provide a new specially designated PEG Access Channel for the same purpose, provided that provision of the additional channel or channels must not require the cable system to install converters.

(h) Channel 6 shall be designated for uniform channel usage pursuant to Minn. Stat. 238.43.

2. Access Rules.

(a) The Commission shall implement rules for use of any specially designated PEG Access Channels. The initial access rules and any amendments thereto shall be maintained on file with the Commission and available for public inspection during Normal Business Hours.

(b) Prior to the cablecast of any program on any PEG Access Channel established herein, the Commission shall require any Person who requests access (public, education, and government) to the System to provide written certification in a form and substance acceptable to the Commission which releases, indemnifies, and holds harmless City, Grantee and their respective employees, offices, agents, and assigns from any liability, cost, damages and expenses, including reasonable expenses for legal fees, arising or connected in any way with said program.

3. PEG Channel Capacity on the Cable System.

(a) PEG Channels on Basic Service. The Primary PEG Channels (in addition to the Regional Channel 6) shall be provided as part of the Basic Cable Service and shall be fully available to every Basic Cable Service tier Subscriber.

(b) Digital Channels After Digital Transition. At such time Grantee no longer offers Basic Cable Service in an analog format, Grantee shall continue to provide the Primary PEG Channels in a standard digital format in Grantee's Basic Cable Service. Grantee shall carry all components of the standard definition PEG Channel signals provided by the Commission including, but not limited to, closed captioning, stereo audio and other elements associated with the programming. The Commission shall be responsible for providing the PEG Channels in a standard definition format to the demarcation point at the designated point of origination for the PEG Channels. Grantee shall transport and distribute the PEG Channels signal on its Cable System and shall not discriminate against PEG Channels with respect to the functionality, signal quality, and features from those of the local broadcast digital format Channels carried on the Cable System. With respect to signal quality, Grantee shall not be required to carry a PEG Channel in a higher quality format than that of the channel signal delivered to Grantee, but Grantee shall distribute the PEG Channel signal without degradation. Any and all costs associated with any modification of the PEG Channels or signals after the PEG Channels/signals leave the City's designated playback facilities, or any designated playback center authorized by the City, shall be provided free of charge to the City and its designees and shall be borne entirely by Grantee, provided, however, nothing herein shall require Grantee to violate Applicable Law.

(c) PEG Channels carried in High Definition. Subject to Grantee's technical ability to provide the following capability on commercially reasonable terms and at any time thirty (30) months or more after the Effective Date of this Franchise, one (1) of the

Primary PEG Channels shall be carried by Grantee in high-definition (“HD”) format upon one hundred and eighty (180) days advance written notice by the Commission and shall not required to be provided as part of Basic Cable Service unless other HD channels are then available on Basic Cable Service. The Commission may provide PEG programming in its discretion on the HD PEG Channel with the goal being to create a HD PEG channel offering a broad variety of PEG programming as determined in Commission’s sole discretion.

(d) HD Equipment. The City acknowledges that receipt of HD format PEG Channels may require Subscribers to buy or lease special equipment required by the System to view any HD Channels, or pay additional HD charges applicable to all HD services.

4. Navigation to PEG Channels. Grantee agrees that if it utilizes a visual interface under its control on its Cable System for all Channels, the PEG Channels shall be treated in a non-discriminatory fashion consistent with Applicable Laws so that Subscribers will have ready access to PEG Channels. This shall not be construed to require Grantee to pay any third party fees that may result from this obligation. This obligation shall refer to the TV Guide channel, and Grantee must allow program data to be sent from LATV-10, Ranger-20 and a third channel if or when it is optioned, when the program data can be generated at the Commission’s or City’s sole cost for such third party fees.

5. Noncommercial Use of PEG. Permitted noncommercial uses of the PEG Channels shall include by way of example and not limitation: (1) the identification of financial supporters similar to what is provided on public broadcasting stations; or (2) the solicitation of financial support for the provision of PEG programming by the City or third party users for charitable, educational or governmental purposes; or (3) programming offered by accredited, non-profit, educational institutions which may, for example, offer telecourses over a PEG Channel without charge.

6. PEG Technical Quality.

(a) Grantee shall maintain its Cable System in accordance with FCC Technical Standards so that PEG Channels and return lines are at the same level of technical quality and reliability as other commercial signals carried by Grantee, so long as the PEG signal comes to Grantee at that level of quality. There shall be no significant deterioration in signal from the point of origination upstream to the point of reception downstream on the Cable System. All processing equipment used by Grantee for processing PEG signals will be of similar quality to the processing equipment used for other commercial Channels.

(b) Within twelve (12) hours of a written request from City to the Grantee identifying a technical problem with a PEG Channel and requesting assistance, Grantee will provide technical assistance or diagnostic services to determine whether or not a problem with a PEG signal is the result of matters for which Grantee is responsible and if so, Grantee will take prompt corrective action. If the problem persists and there is a dispute about the cause, then the parties shall meet with engineering representation from Grantee and the City in order to determine the course of action to remedy the problem.

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

8. Compliance with Minnesota Statutes Chapter 238. In addition to the requirements contained in this Section 6 of this Franchise, Grantee and City shall comply with the PEG requirements mandated by Minn. Stat, 238.084.

9. Access Operating Support.

(a) Within ninety (90) days after the Effective Date, Grantee shall collect One Dollar and 50/100s (\$1.50) per Subscriber per month and shall remit said amounts collected to the Commission on a monthly basis to be used solely to support PEG Access in a manner consistent with Applicable Law ("PEG Fee"). Upon the fifth (5<sup>th</sup>) anniversary of this Franchise, the PEG Fee shall be increased to One Dollar and 65/100s per Subscriber per month. Upon the tenth (10<sup>th</sup>) anniversary of this Franchise, the PEG Fee shall be increased to One Dollar and 80/100s per Subscriber per month for the remaining term of the Franchise. The Commission need not expend the PEG Fees immediately but rather may place them in a designated account to be used for PEG capital purchases over the term of the Franchise. The Commission shall provide written notice to Grantee at least ninety (90) days prior to each scheduled increase of the PEG Fee.

(b) The PEG Fee shall not be deemed "Franchise Fee" as defined in 47 U.S.C. § 542. The PEG Fee may be categorized, itemized, and passed through to Subscribers as permissible, in accordance with 47 U.S.C. §542 or other Applicable Laws. Grantee shall pay the PEG Fee to the Commission monthly, within thirty (30) days following the end of the each month. Grantee agrees that it will not offset or reduce its payment of past, present or future Franchise Fees required as a result of its obligation to remit the PEG Access support. Any PEG Access support amounts owing pursuant to this Franchise which remain unpaid more than twenty-five (25) days after the date the payment is due shall be delinquent and shall thereafter accrue interest at twelve (12) percent per annum or the prime lending rate published by the Wall Street Journal on the day the payment was due plus two percent (2%), whichever is greater.

(c) In the event the Commission is dissolved and the JPA is no longer in place, the Grantee shall submit the PEG Fee to the City and the City shall assume all responsibilities of this Section 6 or as otherwise agreed upon by City and Grantee.

10. Periodic Evaluation. Upon written request from either party, Grantee and the Commission shall meet to evaluate the effect of Section 6. Both parties agree to discuss any proposal for modification presented by the other party. Nothing herein shall presume or require consent to any such proposed modification. Modifications may only occur by mutual written consent of both parties.

## **SECTION 7. OPERATION AND ADMINISTRATION PROVISIONS**

1. Franchise Fee.

(a) Grantee shall pay to City a Franchise Fee in an annual amount equal to five percent (5%) of its annual Gross Revenues.

(b) Payments due to the City under this provision shall be payable monthly. The payment shall be made within thirty (30) days following the end of the each month, together with a brief report showing the basis for the computation.

(c) Upon thirty (30) days prior written notice, City shall have the right to conduct an independent audit of Grantee's records for purposes of determining whether Grantee has accurately collected and paid Franchise Fees. If such audit indicates a Franchise Fee underpayment of five percent (5%) or more, the Grantee shall assume all reasonable out-of-pocket costs of such an audit and shall remit to the City all applicable Franchise Fees due and payable together with interest thereon at twelve percent (12%) per annum.

(d) Except as otherwise provided by law, no acceptance of any payment by the City shall be construed as a release or as an accord and satisfaction of any claim the City may have for further or additional sums payable as a Franchise Fee under this Franchise or for the performance of any other obligation of the Grantee.

2. Access to Records. Throughout the term of this Franchise and subject to execution of a mutually acceptable Non-Disclosure Agreement which shall substantially be in the same form as set forth in the attached Exhibit D, if required by Grantee, the Grantee agrees that the City, upon reasonable prior written notice to the Grantee, may review such of the Grantee's books and records regarding the operation of the Cable System and the provision of Cable Service in the City which are reasonably necessary to monitor and enforce Grantee's compliance with the provisions of this Franchise, subject to the subscriber privacy provisions of federal law 47 U.S.C. § 521 *et seq.* All such documents pertaining to financial matters that may be the subject of an inspection by the City shall be retained by the Grantee for a minimum period required by Applicable Laws. The Grantee shall not deny the City access to any of the Grantee's records on the basis that the Grantee's records are under the control of any parent corporation or affiliated entity. The City may request in writing copies of any such records or books that are reasonably necessary, and the Grantee shall provide such copies within thirty (30) days of the receipt of such request subject to the provisions of this section regarding confidential information and the execution of a Non Disclosure Agreement, if requested by Grantee. One copy of all reports and records required under this or any other section shall be furnished to the City at the sole expense of the Grantee. If the requested books and records are too voluminous, or for security reasons cannot be copied or removed, then the Grantee shall notify the City in writing within ten (10) days of receipt of such request, that the City may inspect them at the Grantee's local offices or at one of Grantee's offices more convenient to City or its duly authorized agent. Subject to execution of a mutually acceptable the Non-Disclosure Agreement in Exhibit D as required below in Section 7(3), Grantee shall provide all books and records requested by the City or City's agent in the following manner: 1) a mutually acceptable physical location within the City; or 2) via mail or electronic communication acceptable to the City and Grantee.

3. Confidential Information. Grantee may choose to provide any confidential books and records that it is obligated to make available to the City pursuant to this Franchise, by allowing the City, or its designated representative(s), to view the books and records at a mutually agreeable location and without City obtaining its own copies of such books and records. Alternatively, confidential or proprietary information may be disclosed pursuant to a reasonable mutually agreeable Non-Disclosure Agreement which shall substantially be in the same form as attached as Exhibit D. The intent of the parties is to work cooperatively to insure that all books and records reasonably necessary for City's monitoring and enforcement of Franchise obligations are provided to City while protecting Grantee's confidential and trade secret information from public disclosure. To the extent that Grantee insists that records must be reviewed outside of the City, and City's designated representative(s) must travel or otherwise incur costs to be able to review such information, Grantee shall pay all reasonable, itemized travel costs incurred by City's representative(s) traveling from the City to such designated locations. To the extent that Grantee does provide books or records directly to the City, City agrees to keep confidential any proprietary or confidential books or records to the extent permitted by Applicable Law. Grantee shall be responsible for clearly and conspicuously identifying any materials being provided as confidential or proprietary.

4. Reports to be Filed with City. Upon request of the City and in no event later than thirty (30) days from the date of receipt of such request, Grantee shall prepare and furnish to City, at Grantee's sole cost, provided, however, nothing herein is intended to exclude these costs from the rate base, such reports with respect to the operations, affairs, transactions or property, as they relate to the Grantee's compliance with this Franchise which Grantee and City may in good faith agree upon taking into consideration Grantee's need for the continuing confidentiality as prescribed herein and the City's need to verify Grantee's compliance with the Franchise. Neither City nor Grantee shall unreasonably demand or withhold information requested pursuant to this Section.

5. Records Required and City's Right to Inspect and Notice to Grantee of request for Records from Third Parties.

(a) One copy of all reports and records required under this Franchise shall be furnished at the sole expense of Grantee, except as otherwise provided in this Franchise; provided, however, nothing herein is intended to exclude these costs from the rate base.

(b) Grantee shall at all times maintain and shall provide at a location convenient to the City upon ten (10) days written request:

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

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

## **SECTION 8. GENERAL FINANCIAL AND INSURANCE PROVISIONS**

### **1. Security Fund.**

(a) Within fourteen (14) days of receipt of a notice from City of an alleged breach of this Franchise, Grantee shall provide, from a financial institution mutually acceptable to the parties, and in a form and substance mutually acceptable to the City, one (1) irrevocable and unconditional Letter of Credit in the sum of Twenty-five Thousand and No/100 Dollars (\$25,000.00) for the benefit of the City to ensure compliance by Grantee with all terms of the Franchise and the payment by Grantee of any claim, penalties, damages, liens and taxes due the City under the Franchise (“Security Fund”). The Letter of Credit shall be provided by Grantee regardless of whether Grantee disputes the alleged violation. Any failure by Grantee to provide the Letter of Credit as required herein shall constitute a separate breach of this Franchise. Any interest on this deposit shall be paid to the Grantee. Once the proceeding addressing the alleged violation has been completed the Grantee shall be relieved of maintaining the Letter of Credit until such time as another alleged violation notification is received by Grantee at which time the process shall begin again.

(b) The Security Fund shall provide that funds will be paid to City, upon written demand of City, and after the procedures of this section have been complied with in payment for liquidated damages charged pursuant to this section or in payment for any monies owed by Grantee pursuant to its obligations under this Franchise.

(c) City, in its sole discretion may charge to and collect from the security fund the following mutually agreed upon liquidated damages:

(1) For failure to timely complete system upgrades or line extensions as provided in this Franchise unless the City has approved delays, failure to meet the customer service standards and requirements as set forth in this Franchise and the exhibits hereto the penalty shall be One Hundred Fifty and No/100 Dollars (\$150) daily fine per day for each day, or part thereof, such failure occurs or continues.

(2) For failure to comply with the terms and conditions of the Franchises with the exception of those terms as outlined in Section 8.1(c), the penalty shall be One Hundred and No/100 Dollars (\$100) daily fine per day for each day, or part thereof, such failure occurs or continues.

(d) City shall follow the procedures outlined below:

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

security fund all penalties and other monies due from the date of the local receipt of notice.

(2) Whenever notice of an alleged violation has been received by Grantee, Grantee may, within thirty (30) days of local receipt of notice, notify the issuer of the notice that there is a dispute as to whether a violation or failure has, in fact, occurred. Such notice by Grantee shall toll the running of the time frames for cure and the accrual of any penalties herein and shall specify with particularity the matters disputed by Grantee. City shall hear Grantee's dispute at its next regularly scheduled meeting or as soon thereafter as possible. Grantee shall be afforded a reasonable notice of the meeting and afforded a reasonable opportunity to participate in and be heard at the meeting. City shall supplement its decision with a written order sustaining or overruling the decision, and shall specify with particularity the basis for its decision.

(3) Upon determination that no violation has taken place, City shall withdraw the notice alleging a violation. Upon determination that a violation has occurred, Grantee shall have the balance of its initial thirty (30) day cure period, measured from the date the Grantee disputed the notice of violation to cure said violation before penalties shall accrue.

(4) Grantee shall have the right to challenge the findings that Grantee has violated one (1) or more terms, conditions or provisions of this Franchise or has failed to substantially cure such violation in a court of competent jurisdiction.

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

(6) If any Security Fund is not so replenished or replaced, City may draw on said Security Fund for the whole amount thereof and hold the proceeds, without interest, and use the proceeds to pay costs incurred by City in performing and paying for any or all of the obligations, duties and responsibilities of Grantee under this Franchise that are not performed or paid by Grantee pursuant hereof, including attorneys' fees incurred by the City in so performing and paying.

## 2. Franchise Violation.

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

security fund all penalties and other monies due the City from the date of the local receipt of notice.

(b) Whenever notice of an alleged violation has been received by Grantee, Grantee may, within thirty (30) days of local receipt of notice, notify City that there is a dispute as to whether a violation or failure has, in fact, occurred. Such notice by Grantee to City shall toll the running of the time frames and the accrual of penalties herein and shall specify with particularity the matters disputed by Grantee. City shall hear Grantee's dispute at the next regularly scheduled Council meeting. City shall supplement the Council decision with written findings of fact.

(c) If Grantee fails either to cure the alleged violation or breach within the time prescribed or to commence correction of the violation or breach within the time prescribed and thereafter diligently pursue correction of such alleged violation or breach, the City shall then give written notice of not less than fourteen (14) days of a public hearing to be held before the Council. Said notice shall specify the violations or breaches alleged to have occurred.

(d) At the public hearing, the Council shall hear and consider relevant evidence and thereafter render findings and its decision.

(e) In the event the Council finds that a material violation or breach exists and that Grantee has not cured the same in a satisfactory manner or has not diligently commenced to cure of such violation or breach after notice thereof from City and is not diligently proceeding to fully cure such violation or breach, the Council may revoke and terminate the Franchise or impose liquidated damages assessable from the security fund in accordance with Section 8.2(c). Grantee may appeal such action to any court and/or regulatory agency of competent jurisdiction and the Franchise shall remain in effect during the pendency of such appeal(s).

(f) To avoid confusion, the same procedure set forth in Section 8.1(e) and Section 8.2 of this Franchise need not be duplicated.

### 3. Indemnification.

(a) Grantee shall indemnify, defend and hold the City, the Commission and their officers, boards, commissions, agents and employees (collectively the "Indemnified Parties") harmless from and against any and all lawsuits, claims, causes of action, actions, liability, demands, damages, judgments, settlements, losses, expenses (including reasonable attorneys' fees) and costs of any nature that any of the Indemnified Parties may at any time, directly or indirectly, suffer, sustain or incur arising out of, based upon or in any way connected with the grant of this Franchise to Grantee, the operation of Grantee's System and/or the acts and/or omissions of Grantee or its agents or employees, whether or not pursuant to the Franchise. This indemnity shall apply, without limitation, to any action or cause of action for invasion of privacy, defamation, antitrust, errors and omissions, theft, fire, violation or infringement of any copyright, trademark, trade names, service mark, patent, or any other right of any Person, whether or not any act or omission

complained of is authorized, allowed or prohibited by this Franchise, but shall exclude any claim or action arising out of the negligence, or willful misconduct of the Indemnified Parties or related to any City programming or other access programming for which the Grantee is not legally responsible or any assertion of a Franchise violation by City or Commission.

(b) City or the Indemnified Parties as applicable shall promptly notify Grantee in writing of any claim or legal proceeding which gives rise to Grantee's indemnification obligations. Grantee shall be afforded the right to participate in and control any compromise, settlement or other resolution or disposition of any claim or proceeding. City and Grantee shall fully cooperate with one (1) another regarding such matters.

4. Insurance. Within sixty (60) days following the grant of this Franchise, the Grantee shall obtain, pay all premiums for and make available to the City at its request copies of an insurance certificate evidencing the following insurance policies:

(a) A general comprehensive liability insurance policy insuring, indemnifying, defending and saving harmless the Indemnified Parties from any and all claims by any Person whatsoever on account of injury to or death of a Person or Persons occasioned by the operations of the Grantee under any Franchise granted hereunder, or alleged to have been so caused or occurred with a minimum coverage of One Million Dollars (\$1,000,000) for personal injury or death of one (1) Person, and Two Million Dollars (\$2,000,000) for personal injury or death of any two (2) or more Persons in any one (1) occurrence.

(b) Property damage insurance for property damage occasioned by the operation of Grantee under this Franchise, or alleged to have been so caused or occurred, with minimum coverage of One Million Dollars (\$1,000,000) for property damage to the property of any one (1) Person and Two Million Dollars (\$2,000,000) for property damage to the property of two (2) or more Persons in any one (1) occurrence.

(c) Workers Compensation Insurance as provided by Applicable Laws.

(d) All insurance policies called for herein shall be in a form satisfactory to the City with a company licensed to do business in the State of Minnesota with a rating by A.M. Best & Co. of not less than "A-," and shall require thirty (30) days written notice of any cancellation to both the City and the Grantee. The Grantee shall, in the event of any such cancellation notice, obtain, pay all premiums for, and file with the City, written evidence of the issuance of replacement policies within thirty (30) days following receipt by the City or the Grantee of any notice of cancellation.

## **SECTION 9. SALE, ABANDONMENT, TRANSFER AND REVOCATION OF FRANCHISE**

1. Franchise Non-Transferable.

(a) Grantee shall not voluntarily, by operation of law or otherwise, sell, assign, transfer, lease, sublet or otherwise dispose of, in whole or in part, the Franchise and/or

Cable System, without the prior written consent of the Council and then only upon such reasonable terms and conditions as allowed under Applicable Laws, which consent shall not be unreasonably denied or delayed. Failure to comply with this Section 9.1 shall be grounds for termination of this Franchise.

(b) Without limiting the nature of the events requiring the Council's approval under this section, the following events shall be deemed to be a sale, assignment or other transfer of the Franchise and/or Cable System requiring compliance with this section: (i) the sale, assignment or other transfer of all or a majority of Grantee's assets or the assets comprising the Cable System to any Person; (ii) the merger of the Grantee or any of its parents with or into another Person (including the merger of Grantee or any parent with or into any parent or subsidiary corporation or other Person); (iii) the consolidation of the Grantee or any of its parents with any other Person; (iv) the creation of a subsidiary corporation or other entity to which the Franchise and/or Cable System is transferred or assigned; (v) the sale, assignment or other transfer of capital stock or partnership, membership or other equity interests in Grantee or any of its parents by one (1) or more of its existing shareholders, partners, members or other equity owners so as to create a new controlling interest in Grantee; and (vi) the issuance of additional capital stock or partnership, membership or other equity interest by Grantee or any of its parents so as to create a new controlling interest in Grantee. The term "controlling interest" as used herein is not limited to majority equity ownership of the Grantee, but also includes actual working control over the Grantee, any parent of Grantee and/or the System in whatever manner exercised.

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

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

(e) Any financial institution having a security interest in any and all of the property and assets of Grantee as security for any loan made to Grantee or any of its affiliates for the construction and/or operation of the Cable System must notify the City that it or its designee satisfactory to the City shall take control of and operate the Cable System, in the event of a default in the payment or performance of the debts, liabilities or obligations of Grantee or its affiliates to such financial institution. Further, said financial institution shall also submit a plan for such operation of the System within thirty (30) days of assuming such control that will insure continued service and compliance with all Franchise requirements during the term the financial institution or its designee exercises

control over the System. The financial institution or its designee shall not exercise control over the System for a period exceeding one (1) year unless extended by the City in its discretion and during said period of time it shall have the right to petition the City to transfer the Franchise to another Grantee.

(f) In addition to the aforementioned requirements in this Section 9.1, the City and Grantee shall, at all times, comply with the requirements of Minnesota Statutes Section 238.083 regarding the sale or transfer of a franchise and with all other Applicable Laws.

2. City's Right to Purchase System. The City shall have a right of first refusal to purchase the Cable System in the event the Grantee receives a bona fide offer to purchase the Cable System from any Person. Bona fide offer as used in this section means a written offer which has been accepted by Grantee, subject to the City's rights under this Franchise. The price to be paid by the City shall be the amount provided for in the bona fide offer, including the same terms and conditions as the bona fide offer. The City shall notify Grantee of its decision to purchase within sixty (60) days of the City's receipt from Grantee of a copy of the written bona fide offer.

3. Abandonment or Removal of Franchise Property.

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

(b) City, upon such terms as City may impose, may give Grantee permission to abandon, without removing, any System facility or equipment laid, directly constructed, operated or maintained in, on, under or over the Service Area. Unless such permission is granted or unless otherwise provided in this Franchise, the Grantee shall remove all abandoned facilities and equipment upon receipt of written notice from City and shall restore any affected Street to its former state at the time such facilities and equipment were installed, so as not to impair its usefulness. In removing its plant, structures and equipment, Grantee shall refill, at its own expense, any excavation made by or on behalf of Grantee and shall leave all Streets and other public ways and places in as good condition as that prevailing prior to such removal without materially interfering with any electrical or telephone cable or other utility wires, poles or attachments. City shall have the right to inspect and approve the condition of the streets, public ways, public places, cables, wires, attachments and poles prior to and after removal. The liability, indemnity and insurance provisions of this Franchise and any security fund provided for in the Franchise shall continue in full force and effect during the period of removal and until full compliance by Grantee with the terms and conditions of this section.

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

(d) At the expiration of this Franchise, or upon its earlier revocation or termination, as provided for in the Franchise, in any such case without renewal, extension or transfer,

the City shall have the right to require Grantee to remove, at its own expense, all above-ground portions of the Cable System from all Streets and public ways within the City within a reasonable period of time, which shall not be less than one hundred eighty (180) days provided, however, that if Grantee is legally providing services other than Cable Services over its Cable System, City shall comply with all Applicable Laws pertaining to Grantees rights to continue using its Cable System to provide non-Cable Services.

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

4. Receivership and Foreclosure.

(a) This Franchise shall, at the option of City, cease and terminate one hundred twenty (120) days after appointment of a receiver or receivers, or trustee or trustees, to take over and conduct the business of Grantee, whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless: (1) such receivers or trustees shall have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Franchise granted pursuant hereto, and the receivers or trustees within said one hundred twenty (120) days shall have remedied all the defaults and violations under this Franchise or provided a plan for the remedy of such defaults and violations which is satisfactory to the City; and (2) such receivers or trustees shall, within said one hundred twenty (120) days, execute an agreement duly approved by the court having jurisdiction in the premises, whereby such receivers or trustees assume and agree to be bound by each and every term, provision and limitation of this Franchise.

(b) In the case of a foreclosure or other judicial sale of the Franchise property, or any material part thereof, City may give notice of termination of any Franchise granted pursuant to this Franchise upon Grantee and the successful bidder at such sale, in which the event the Franchise granted and all rights and privileges of the Grantee hereunder shall cease and terminate thirty (30) days after such notice has been given, unless (1) City shall have approved the transfer of the Franchise in accordance with the provisions of this Franchise; and (2) such successful bidder shall have covenanted and agreed with City to assume and be bound by all terms and conditions of the Franchise.

**SECTION 10. PROTECTION OF INDIVIDUAL RIGHTS**

1. Rights of Individuals.

(a) Grantee shall not deny service, deny access, or otherwise discriminate against Subscribers, Channel users, or general citizens on the basis of race, color, religion, disability, national origin, age, gender or sexual preference. Grantee shall comply at all times with all other Applicable Laws, relating to nondiscrimination.

(b) Grantee shall adhere to the applicable equal employment opportunity requirements of Applicable Laws, as now written or as amended from time to time.

(c) Neither Grantee, nor any Person, agency, or entity shall, without the Subscriber's consent, Tap or arrange for the Tapping, of any cable, line, signal input device, or Subscriber outlet or receiver for any purpose except routine maintenance of the System, detection of unauthorized service, polling with audience participating, or audience viewing surveys to support advertising research regarding viewers where individual viewing behavior cannot be identified.

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

## 2. Subscriber Privacy.

(a) No signals of a Class IV Cable Communications Channel may be transmitted from a Subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of a Subscriber. The request for permission must be contained in a separate document with a prominent statement that the Subscriber is authorizing the permission in full knowledge of its provisions. The written permission must be for a limited period of time not to exceed one (1) year which is renewable at the option of the Subscriber. No penalty may be invoked for a Subscriber's failure to provide or renew the authorization. The authorization is revocable at any time by the Subscriber without penalty of any kind. The permission must be required for each type or classification of Class IV Cable Communications activity planned.

(b) No information or data obtained by monitoring transmission of a signal from a Subscriber terminal, including but not limited to the lists of the names and addresses of the Subscribers or lists that identify the viewing habits of Subscribers may be sold or otherwise made available to any Person other than to Grantee and its employees for internal business use, or to the Subscriber who is the subject of that information, unless the Grantee has received specific written authorization from the Subscriber to make the data available.

(c) Written permission from the Subscriber shall not be required for the systems conducting system wide or individually addressed electronic sweeps for the purpose of verifying system integrity or monitoring for the purpose of billing. Confidentiality of this information is subject to paragraph 1 above.

## **SECTION 11. MISCELLANEOUS PROVISIONS**

1. Franchise Renewal. Any renewal of this Franchise shall be done in accordance with Applicable Laws and regulations.
2. Work Performed by Others. All provisions of this Franchise shall apply to any subcontractor or others performing any work or services pursuant to the provisions of this Franchise. Grantee shall provide notice to the Member Cities of the name(s) and address of any entity, other than Grantee, which performs substantial services pursuant to this Franchise.
3. Amendment of Franchise. 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 11.5 or at any other time if City and Grantee agree that such an amendment will be in the public interest or if such an amendment is required due to changes in Applicable Laws. City shall act pursuant to local law pertaining to the ordinance amendment process. Grantee expressly acknowledges and agrees that the City hereby retains all of its police powers and the City may unilaterally amend the Franchise in the exercise of its police powers and Grantee shall comply with said Franchise as may be amended; provided, however, that the City hereby agrees to use reasonable efforts to address public health, welfare and safety needs without resorting to amending the Franchise and in all cases shall not act in any manner which materially impairs the rights and/or privileges granted to Grantee pursuant to the Franchise.
4. Compliance with Applicable Laws. If any Applicable Law 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.
5. Periodic Evaluation. The field of cable communications is rapidly changing and may see many regulatory, technical, financial, marketing and legal changes during the term of this Franchise. Therefore, in order to provide for a maximum degree of flexibility in this Franchise, and to help achieve a continued advanced and modern System, the following evaluation provisions shall apply:
  - (a) The Member Cities may require evaluation sessions at any time during the term of this Franchise, upon thirty (30) days written notice to Grantee, provided, however, there shall not be more than one (1) review session during each four (4) year period commencing on the effective date of this Franchise.
  - (b) All evaluation sessions shall be open to the public and notice of sessions published in the same way as a legal notice. Grantee shall notify its Subscribers of all evaluation sessions by announcement on at least one (1) Basic Cable Service Channel of the System between the hours of 7:00 p.m. and 9:00 p.m. for five (5) consecutive days preceding each session.

(c) Topics which may be discussed at any evaluation session may include, but are not limited to, application of new technologies, System performance, programming offered, access channels, facilities and support, municipal uses of cable, customer complaints, amendments to this Franchise, judicial rulings, FCC rulings, line extension policies and any other topics the Member Cities and Grantee deem relevant.

(d) As a result of a periodic review or evaluation session, the Member Cities and Grantee shall develop such changes and modifications to the terms and conditions of the Franchise, as are mutually agreed upon and which are both economically and technically feasible.

6. Grantee Acknowledgment of Validity of Franchise. Grantee acknowledges that it has had an opportunity to review the terms and conditions of this Franchise and that under current law Grantee believes that said terms and conditions are not unreasonable or arbitrary.

7. Rights Reserved to City.

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

(b) The City shall have the right to waive any provision of the Franchise, except those required by Applicable Laws, if the City, in its sole opinion, determines (1) that it is in the public interest to do so, and (2) that the enforcement of such provision will impose an undue hardship on the Grantee or the Subscribers in all cases subject to Section 11.8 herein. Waiver of any provision in one (1) instance shall not be deemed a waiver of such provision subsequent to such instance nor be deemed a waiver of any other provision of the Franchise unless the statement so recites.

8. Severability. If any provision of this Franchise is held by any Governmental Authority of competent jurisdiction, to be invalid as conflicting with any Applicable Laws now or hereafter in effect, or is held by such Governmental Authority to be modified in any way in order to conform to the requirements of any such Applicable Laws, such provision shall be considered a separate, distinct, and independent part of this Franchise, and such holding shall not affect the validity and enforceability of all other provisions hereof. In the event that such Applicable Laws are subsequently repealed, rescinded, amended or otherwise changed, so that the provision hereof which had been held invalid or modified is no longer in conflict with such laws, said provision shall thereupon return to full force and effect and shall thereafter be binding on City and Grantee, provided that City shall give Grantee thirty (30) days written notice of such change before requiring compliance with said provision or such longer period of time as may be reasonably required for Grantee to comply with such provision.

9. Force Majeure; Grantee's Inability To Perform. In the event Grantee's performance of any of the terms, conditions or obligations required by this Franchise is prevented by a cause or event not within Grantee's control, such inability to perform shall be deemed excused for the period of such inability and no penalties or sanctions shall be imposed as a result thereof. For the purpose of this section, causes or events not within the control of Grantee shall include, without

limitation, acts of God, strikes, sabotage, riots or civil disturbances, equipment availability, unseasonal and/or unusual weather conditions, restraints imposed by order of a governmental agency or court, failure or loss of utilities, explosions, damage to the System such as fiber cuts, acts of public enemies, and natural disasters such as floods, earthquakes, landslides and fires.

10. Equal Opportunity. Grantee is an Equal Opportunity/Affirmative Action employer M/F/D/V.

**SECTION 12. PUBLICATION EFFECTIVE DATE; ACCEPTANCE AND EXHIBITS**

1. Publication; Effective Date. This Franchise shall be published in accordance with applicable Minnesota law. The effective date of this Franchise shall be the date of acceptance by Grantee in accordance with the provisions of Section 12.2 (“Effective Date”).

2. Acceptance.

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

(b) Upon acceptance of this Franchise, Grantee shall be bound by all the terms and conditions contained herein.

(c) Grantee shall accept this Franchise in the following manner:

(1) This Franchise will be properly executed and acknowledged by Grantee and delivered to City.

(2) With its acceptance, Grantee shall also deliver any, performance bond, security fund and insurance certificates required herein that have not previously been delivered.

Passed and adopted this \_\_\_\_ day of November, 2013.

ATTEST:

CITY OF COLUMBUS, MINNESOTA

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

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

MIDCONTINENT COMMUNICATIONS  
Midcontinent Communications Investor, LLC  
Managing Partner of Midcontinent Communications

By: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_, 2013

## EXHIBIT A PUBLIC BUILDINGS

1.	Senior High School	6101 Scandia Trail North	Forest Lake, MN 55025
2.	Central Learning Center	200 SW Fourth Street	Forest Lake, MN 55025
3.	Southwest Junior High School	943 SW Ninth Avenue	Forest Lake, MN 55025
4.	Columbus Elementary School	17345 Notre Dame Street	Forest Lake, MN 55025
5.	Forest Lake Elementary School	408 SW Fourth Street	Forest Lake, MN 55025
6.	Forest View Elementary School	620 SW Fourth Street	Forest Lake, MN 55025
7.	Scandia Elementary School	14351 Scandia Trail North	Scandia, MN 55073
8.	District Office	6100 North 210th Street	Forest Lake, MN 55025
9.	North Lakes Academy Building #1	308 SW Fifteenth Street	Forest Lake, MN 55025
10.	City of Forest Lake (City Hall)	220 North Lake Street	Forest Lake, MN 55025
11.	Forest Lake Fire Department	879 SW Fourth Street	Forest Lake, MN 55025
12.	Forest Lake Police Department	220 North Lake Street	Forest Lake, MN 55025
13.	Forest Lake Senior Center	767 SW Fourth Street	Forest Lake, MN 55025
14.	Forest Lake Public Works Building	21350 Forest Boulevard	Forest Lake, MN 55025
15.	Scandia City Hall/Community Senior Center	14727 - 209th Street	Forest Lake, MN 55025
16.	Columbus City Hall	16319 Kettle River Road	Forest Lake, MN 55025
17.	Century Junior High School	21395 Goodview Avenue North	Forest Lake, MN 55025
18.	Washington County Library	19955 Forest Boulevard North	Forest Lake, MN 55025
19.	Washington County Service Center	19955 Forest Boulevard North	Forest Lake, MN 55025
20.	Forest Lake Area Athletic Assoc.	5530 206 <sup>th</sup> Street North	Forest Lake, MN 55025
21.	Lakes International Language Academy	246 11 <sup>th</sup> Avenue Southeast	Forest Lake, MN 55025
22.	North Lakes Academy Building #2	255 B 7 <sup>th</sup> Avenue	Forest Lake, MN 55025
23.	Scandia Fire Station	15040 Scandia Trail North	Scandia, MN 55073
24.	Scandia Public Works	15040 Scandia Trail North	Scandia, MN 55073
25.	St. Peter's Catholic School	1250 South Sh. Drive	Forest Lake, MN 55025
26.	Future Forest Lake Fire Dept.	1408 South Lake Street	Forest Lake, MN 55025
27.	Future Forest Lake City Campus	1408 South Lake Street	Forest Lake, MN 55025
28.	Future Lakes International Language Academy Building #2**	Tentative plans to build south of the Forest Lake Area Athletic Assoc., FLAAA Sports Complex and west of Fenway Avenue	Forest Lake, MN 55025

\*\*Grantee shall provide the first five hundred (500) feet of construction to connect this location to the System, free of charge, with the balance of the Actual Cost of the connection to be paid by the requesting institution.

**EXHIBIT B**  
**PROGRAM ORIGINATION CAPABILITY**

1.	Lakes Area Community Television	24260 Greenway Avenue, Suite C	Forest Lake, MN 55025
2.	City of Forest Lake City Campus	1408 South Lake Street	Forest Lake, MN 55025
3.	Columbus City Hall	16345 Kettle River Boulevard	Columbus, MN 55025
4.	Scandia City Hall	14727 209 <sup>th</sup> Street North	Scandia, MN 55073

In the event Lakes Area Community Television is relocated during the term of this Franchise, Grantee shall provide a two-way connection to such relocated playback facility. The Commission shall have the option to: 1) require Grantee to construct, free of charge, the first five hundred (500) feet of such two-way connection from Grantee's nearest technically feasible point on Grantee's Cable System with the balance of the Actual Cost of the connection to be paid by the Commission; or 2) utilize up to Ten Thousand and No/100 Dollars (\$10,000) of construction costs from Grantee to install such two-way connection with the balance of the Actual Cost of the connection to be paid by the Commission.

## **EXHIBIT C**

### **CUSTOMER SERVICE STANDARDS**

Grantee shall maintain one (1) or more customer service and bill payment offices at convenient locations to provide the necessary facilities, equipment and personnel to comply with the following consumer protection standards under Normal Operating Conditions:

- (a) Cable System office hours and telephone availability:
  - (1) Grantee will maintain a local, toll-free or collect call telephone access line which will be available to its Subscribers twenty-four (24) hours a day, seven (7) days a week.
  - (2) Trained Grantee representatives will be available to respond to customer telephone inquiries during Normal Business Hours.
  - (3) After Normal Business Hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after Normal Business Hours must be responded to by a trained Grantee representative on the next business day.
  - (4) 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.
  - (5) The Grantee will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.
  - (6) Under Normal Operating Conditions, the customer will receive a busy signal less than three percent (3%) of the time.
  - (7) Customer service center and bill payment locations will be open at least during Normal Business Hours.
  
- (b) Installations, outages and service calls. Under Normal Operating Conditions, each of the following four standards will be met no less than ninety-five percent (95%) of the time measured on a quarterly basis:
  - (1) Standard Installations will be performed within seven (7) business days after an order has been placed. “Standard” Installations are defined in the Franchise.

- (2) Excluding conditions beyond the control of Grantee, Grantee will begin working on “Service Interruptions” promptly and in no event later than twenty-four (24) hours after the interruption becomes known. The Grantee must begin actions to correct other service problems the next business day after notification of the service problem.
  - (3) The “appointment window” alternatives for Installations, service calls, and other Installation activities will be either a specific time or, at maximum, a four-hour time block during Normal Business Hours. (The Grantee may schedule service calls and other Installation activities outside of Normal Business Hours for the express convenience of the customer.)
  - (4) Grantee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.
  - (5) If Grantee’s representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted prior to the time of the scheduled appointment. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.
- (c) Communications between Grantee and Subscribers:
- (1) The Grantee shall provide written information on each of the following areas at the time of Installation of service, at least annually to all Subscribers, and at any time upon request:
    - (A) Products and services offered;
    - (B) Prices and options for programming services and conditions of subscription to programming and other services;
    - (C) Installation and service maintenance policies;
    - (D) Instructions on how to use the Cable Service;
    - (E) Channel positions of the programming carried on the System; and
    - (F) Billing and complaint procedures, including the address and telephone number of the Grantee’s office within the Service Area.
  - (2) Customers will be notified of any changes in rates, programming services or Channel positions as soon as possible through announcements on the Cable System and in writing. Notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the Grantee. In addition, the Grantee shall notify Subscribers thirty (30) days in advance of any significant changes in the other information required by paragraph (c)(1) above.

- (d) Refunds: Refund checks will be issued promptly, but no later than either:
  - (1) The customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or
  - (2) The return of the equipment supplied by the Grantee if service is terminated.
- (e) Credits: Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.
- (f) Billing.
  - (1) Bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.
  - (2) In case of a billing dispute, the Grantee must respond to a written complaint from a Subscriber within thirty (30) days.

**EXHIBIT D**  
**NON-DISCLOSURE AGREEMENT**

THIS NON-DISCLOSURE AGREEMENT is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ between Midcontinent Communications (“Midcontinent”) and the City of Columbus, Minnesota (“Recipient”).

WHEREAS, Midcontinent holds a cable television franchise (“Franchise”) issued by Recipient which requires that Midcontinent make available certain of its books and records to verify Midcontinent’s compliance with the terms and provisions of the Franchise; and

WHEREAS, Midcontinent is making available for inspection by Recipient certain Confidential Material (as defined below) for the sole and exclusive purpose of permitting Recipient to perform an audit of the payments required under the Franchise and to compile a written report based on the audit findings (the “Purpose”); and

WHEREAS, as a condition to making the Confidential Material available, the parties desire to protect the confidential nature of the Confidential Material in accordance with the terms of this Agreement;

NOW, THEREFORE, in consideration of the foregoing and of the promises contained in this Agreement, Midcontinent and Recipient hereby agree as follows:

1. Confidential Material. For purposes of this Agreement, the term Confidential Material shall include all business, financial, technical and other information concerning Midcontinent’s business, provided in writing or in any other form or media; provided, however, that “Confidential Material” shall not include any information that (a) becomes generally available to the public other than as a result of disclosure, directly or indirectly, by Recipient or its Representatives (as defined below), or (b) was available to Recipient on a non-confidential basis prior to disclosure by Midcontinent, (c) is lawfully obtained from a third party under no obligation of confidentiality, (d) is developed by the Recipient or is generally disclosed by Midcontinent to third parties without an obligation of confidentiality. This Agreement imposes no obligation on Recipient with respect to any portion of the Confidential Material disclosed by Midcontinent, unless such portion is marked “CONFIDENTIAL” prior to submitting such information to Recipient.
2. Restriction on Use and Disclosure. Consistent with Section 7.3 of the Franchise, Midcontinent shall provide all books and records requested by the Recipient or Recipient’s agent in the following manner: 1) a mutually acceptable physical location within the City; or 2) via mail or electronic communication acceptable to the Recipient and Grantee. Recipient and its Representatives may make such notes with respect to the Confidential Material (“Notes”) as may be necessary for the Purpose, and all such Notes shall be treated as Confidential Material hereunder. Recipient shall use the Confidential Material solely in furtherance of the Purpose, and shall not disclose the Confidential Material or any portion thereof to any Person except those of its employees, consultants and advisors who need to know such information in furtherance of the Purpose (the

Persons to whom such disclosure is permitted being collectively referred to as “Representatives”). Recipient agrees that, before disclosing the Confidential Material or any portion thereof to any Representatives, Recipient will inform the Representatives of the confidential nature of the Confidential Material and of the Representatives’ duty to treat the Confidential Material in accordance with this Agreement. Without in any way limiting the foregoing, Recipient shall take all steps necessary to prevent disclosure of the Confidential Material under any open records law, including, without limitation, by exercising its discretion not to disclose Confidential Material in response to an open records act request, and taking all necessary actions to defend against such request. If Recipient or any of its Representatives becomes legally compelled to disclose any of the Confidential Material, the compelled party shall provide Midcontinent with prompt notice of such requirement prior to disclosure so that Recipient may seek a protective order or other appropriate remedy. If such protective order or other remedy is not obtained, the compelled party shall furnish only that portion of the Confidential Material which it is legally required to furnish and shall use its best efforts to assure that confidential treatment will be accorded such Confidential Material. Recipient shall have the right to draft a written report to fulfill the Purpose of the review and Recipient agrees that in drafting said report information shall, to the extent feasible, be provided in an aggregate form. Recipient shall use its best efforts not to communicate confidential information in the report unless necessary to communicate a finding of the audit/review.

3. Equitable Remedies. Recipient acknowledges that, in the event of a breach or threatened breach of this Agreement, there is a substantial likelihood of material, irreparable injury to Midcontinent, and that money damages would not be a sufficient remedy for any such breach or prospective breach by Recipient or its Representatives. Recipient therefore agrees that Midcontinent shall be entitled to specific performance of Recipient’s agreements herein, and to injunctive relief to terminate or prevent any breach or prospective breach of this Agreement. No bond or other security shall be necessary with respect to such relief. Midcontinent shall be entitled to receive from Recipient reimbursement of Midcontinent’s costs and expenses (including attorneys’ fees) incurred in connection with any breach by Recipient or its Representatives, but such reimbursement may only be ordered by a court of competent jurisdiction.
4. Miscellaneous. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral and written, with respect to such matters. No failure or delay in exercising any right, power, or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other exercise of any right, power or privilege hereunder. If any part or any provision of this Agreement shall be deemed to be invalid or unenforceable in any respect, such part shall be ineffective to the extent of such invalidity only, without in any way affecting the remaining provisions of this Agreement. No amendment to this Agreement shall be valid unless it is made in writing and signed by both parties. This Agreement shall inure to the benefit of, and be binding upon, the parties, their successors and permitted assigns. This Agreement shall be governed by laws of the State of Minnesota without regard to the choice of law provisions thereof.

IN WITNESS WHEREOF, each party has caused this Agreement to be duly executed on its behalf as of the date set forth above.

CITY OF COLUMBUS, MINNESOTA

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

MIDCONTINENT COMMUNICATIONS  
Midcontinent Communications Investor, LLC  
Managing Partner of Midcontinent Communications

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_