

CITY OF NORTHFIELD, MINNESOTA

**ORDINANCE GRANTING A CABLE TELEVISION FRANCHISE
TO
CMN-RUS, INC.**

Dated: June 7, 2021

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CITY OF NORTHFIELD

ORDINANCE NO. 1026

AN ORDINANCE GRANTING A FRANCHISE TO CMN-RUS, INC. TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE SYSTEM IN THE CITY OF NORTHFIELD, MINNESOTA, FOR THE SOLE PURPOSE OF PROVIDING CABLE SERVICE; SETTING FORTH CONDITIONS FOR THE GRANT OF THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM AND THE PUBLIC RIGHTS-OF-WAY IN CONJUNCTION WITH THE CITY'S RIGHT-OF-WAY ORDINANCE, IF ANY; AND PRESCRIBING PENALTIES FOR THE VIOLATION OF THE PROVISIONS HEREIN.

THE CITY COUNCIL OF THE CITY OF NORTHFIELD, MINNESOTA, DOES ORDAIN:

ARTICLE 1.

STATEMENT OF INTENT AND PURPOSE, AUTHORITY AND FINDINGS

1.1) Statement of Intent and Purpose.

- (a) The City of Northfield, Minnesota ("City") intends, by adoption of this Franchise, to bring about the construction of an all fiber Cable System and the continued operation of it. Such an all fiber Cable System 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 competition, better utilization and improvement of public service and enhanced economic development with the construction and operation of an all fiber Cable System.
- (b) The City, pursuant to Applicable Law, is authorized to grant one or more nonexclusive franchises to construct, operate, maintain, and reconstruct Cable Systems within the City.
- (c) The City finds that Cable Service has become an integral part of its citizens' lives, and that evolving Cable Systems have the potential to play an even more dramatic role in the future, providing great benefits and advanced capabilities to Residents of the City. At the same time, the rapidly emerging role of Cable Systems as an integrated broadband communications platform necessitates a finding that the City has a legitimate and vital role to play in regulating Cable Services in a manner that ensures high quality customer service, while at the same time fostering competition to the extent permitted under law. The City further finds that the public convenience, safety, and general welfare can best be served by establishing regulatory powers that are vested in the City or the designees of the City.
- (d) In order to ensure that the City and its Residents receive state-of-the-art Cable Services and capabilities as broadband technology further evolves, the Franchise granted pursuant to this ordinance will be subject to periodic review and modifications to keep current with changing law, technology, and services. It is the

intent of this Franchise to provide for and specify the means to attain the best possible Cable Services for the City and its Residents.

- (e) Adoption of this Franchise is, in the judgment of the Council, in the best interests of the City and its Residents.

1.2) Findings. In reviewing the request for a franchise submitted by CMN-RUS, Inc. (“Grantee”) and information adduced during Franchise negotiations, and as a result of a public hearing, the City Council makes the following findings:

- (a) That the City, pursuant to Applicable Law, is authorized to grant one or more nonexclusive franchises to construct, operate, maintain and reconstruct Cable Systems within City limits; and
- (b) That the development of Cable Systems has the potential of having great benefit and impact upon the Residents of the City. Because of the complex and rapidly changing technology associated with cable television, the City Council further finds that the public convenience, safety and general welfare can best be served by establishing regulatory powers which should be vested in City or such Persons as City shall designate; and
- (c) That Grantee has applied to the City for a nonexclusive franchise to construct, install, maintain and operate a Cable System in the City; and
- (d) That the construction, installation, maintenance and operation of such a System involves the occupation of and placement of private commercial facilities in the Rights-of-Way within the City; and
- (e) That the City has considered the financial, technical and legal qualifications of Grantee, and has determined that Grantee’s plans for constructing, operating and maintaining its Cable System are adequate, in a full public proceeding affording all parties due process and a reasonable opportunity to be heard; and
- (f) That City has relied on Grantee’s representations regarding its financial, technical and legal qualifications and its plans for constructing, operating, and maintaining its Cable System, and has considered the information that Grantee has presented to it; and
- (g) That based on Grantee’s representations and information, and in response to its request for a cable television franchise, the City Council has determined that the grant of a nonexclusive franchise on the terms and conditions herein and subject to Applicable Law, is consistent with the public interest; and
- (h) That to the knowledge and belief of the City, this Franchise and the procedure used in formulating and awarding the same in all ways complies with the franchise standards of Applicable Law; and
- (i) That this Franchise granted to Grantee is nonexclusive; and

- (j) That the City and Grantee have reached agreement on the terms and conditions set forth herein.

ARTICLE 2. TITLE OF ORDINANCE

This Franchise Ordinance shall be known and may be cited as the “Northfield Cable Franchise Ordinance for CMN-RUS, Inc.,” and it shall become part of the ordinances and Legislative Code of the City of Northfield, Minnesota.

ARTICLE 3. DEFINITIONS

For the purpose of this Franchise, the following terms, phrases, words and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words “shall” and “will” are mandatory and “may” is permissive. References to officials, departments, agencies or other entities, whether defined or not, shall be read to refer to the same, or their authorized successors. References to statutory provisions shall refer to those provisions as they may be renumbered from time to time. References to Applicable Law or to any part of the Code of Ordinances of the City of Northfield refer to the same as they may be amended from time to time during the term of the Franchise. Words not defined herein shall be defined as in 47 U.S.C. § 521 et seq.; if not defined there, the words herein shall be given their common and ordinary meaning.

- 3.1) Access** shall mean the availability for Noncommercial use by various agencies, institutions, organizations, groups and individuals in the community, including the City and its designees, of the Cable System to acquire, create, receive, and distribute video Cable Services and other services and signals as permitted under Applicable Law, including, but not limited to:
 - (a) **Public Access** shall mean Access where community-based organizations, groups or individual members of the general public, on a nondiscriminatory basis, are the primary users.
 - (b) **Educational Access** shall mean Access where: (i) schools are the primary providers, producers and/or users having editorial control over programming and services; or (ii) programming and service content is about or related to schools, regardless of whether schools exercise any editorial control over the programming or are the original program producer.
 - (c) **Government Access** shall mean Access where governmental institutions, or their designees are the primary users having editorial control over programming and services.
- 3.2) Access Channel** shall mean any Channel, or portion thereof, designated for Access purposes or otherwise made available to facilitate or transmit Access programming or services.

- 3.3) **Activated** shall mean the status of any capacity or part of the Cable System in which any Cable Service requiring the use of that capacity or part is available without further installation of System equipment, whether hardware or software.
- 3.4) **Affiliate** shall mean any Person who owns or controls, is owned or controlled by, or is under common ownership or control with the Grantee.
- 3.5) **Applicable Law** shall mean any local, state or federal law, statute, charter, ordinance, rule, regulation, code, license, certificate, franchise, permit, writ, ruling, award, executive order, directive, requirement, injunction (whether temporary, preliminary or permanent), judgment, decree or other order issued, executed, entered or deemed applicable to City by any governmental authority having jurisdiction over City.
- 3.6) **Bad Debt** shall mean amounts lawfully billed to a Subscriber and owed by the Subscriber for Cable Service and accrued as revenues on the books of Grantee, but not collected after all reasonable efforts have been made by Grantee to collect the charges.
- 3.7) **Basic Cable Service** shall mean any service tier which includes the lawful retransmission of local television broadcast signals and any public, educational and governmental access programming required by the Franchise to be carried on the basic tier. Basic Cable Service as defined herein shall not be inconsistent with 47 U.S.C. § 522.
- 3.8) **Cable Act** shall mean the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996, and including regulations promulgated pursuant to such Act and as it may be amended, and any future federal laws, acts or regulations governing Cable Systems and Cable Service.
- 3.9) **Cable Service or Service** shall mean (1) the one-way transmission to Subscribers of Video Programming or Other Programming Services; and (2) Subscriber interaction, if any, which is required for the selection or use of such Video Programming or Other Programming Services.
- 3.10) **Cable System or System** shall mean the facility of the Grantee consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed solely to provide Cable Service, which includes Video Programming and which is provided to multiple Subscribers within the City, but such term does not include: (1) a facility that only serves to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves Subscribers without using any Rights-of-Way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act, except that such facility shall be considered a System if such facility is used in the transmission of Video Programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (4) an open video system that complies with 47 U.S.C. § 573; or (5) any facilities of any electric utility used solely for operating its electric utility system. "Cable System" or "System" as defined herein shall not be inconsistent with the definitions set forth in Applicable Law.

- 3.11) **Channel or Cable Channel** shall mean a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel as defined by the FCC.
- 3.12) **City** shall mean the City of Northfield, a Minnesota municipal corporation, as it exists and as its borders may from time to time be changed. Where the Franchise requires that an action be taken by the City, that action may be taken by any person authorized to act on the City's behalf.
- 3.13) **City Code** shall mean the Municipal Code of Northfield, Minnesota.
- 3.14) **Commercial Subscribers** shall mean any Subscribers other than Residential Subscribers.
- 3.15) **Complaint** shall mean any written inquiry, allegation or assertion made by a Person.
- 3.16) **Council** shall mean the City Council of the City of Northfield, Minnesota.
- 3.17) **Demarcation Point** shall mean the patch panel, termination block or other termination device provided by the Grantee, located within each Public Building. In all cases the Demarcation Point will be clearly marked as such by Grantee and will provide an identifiable interface for the end user electronics.
- 3.18) **Designated Access Provider** shall mean the entity or entities designated now or in the future by the City to manage or co-manage Access Channels and facilities. The City may be a Designated Access Provider.
- 3.19) **Downstream** shall mean carrying a transmission from the Headend to remote points on the Cable System or to Interconnection points on the Cable System.
- 3.20) **Drop** shall mean the cable that connects the ground block on the Subscriber's residence or institution to the nearest feeder cable of the System.
- 3.21) **Dwelling Unit** shall mean any building, or portion thereof, that has independent living facilities, including provisions for cooking, sanitation and sleeping, and that is designed for residential occupancy that has the ability to receive Grantee's Cable Service without the need for Grantee to obtain any private property rights from a third party or that has access to Cable Service through a fiber-to-the-premises network. This definition of Dwelling Unit shall be consistent with Minnesota Statutes Section 238.02, Subdivision 21a. Buildings with more than one set of facilities for cooking shall be considered Multiple Dwelling Units unless the additional facilities are clearly accessory.
- 3.22) **Easement** shall mean those Rights-of-Way maintained for the benefit of the public and controlled by the City, the terms, conditions or limitations of which are not inconsistent with the erection, construction or maintenance of a Cable System, its structures or equipment.
- 3.23) **Effective Date** shall mean the date this Franchise becomes effective, in accordance with this Franchise and the rules and procedures of the City.

- 3.24) Expanded Basic Service** shall mean the Tier of optional Video Programming services, which is the level of Cable Service received by most Subscribers above Basic Service and does not include Premium Services or pay-per-view services.
- 3.25) Fair Market Value** shall mean the sum of the amount a willing buyer, under no compulsion to buy, would pay to a willing seller, under no compulsion to sell, to acquire all assets of the Grantee, real and personal, but not intangible, reduced for the value of any dedication of assets of the Grantee to third parties which are not revenue producing.
- 3.26) FCC** shall mean the Federal Communications Commission, its designee, and any legally appointed, designated or elected agent or successor.
- 3.27) Franchise or Cable Franchise** shall mean this ordinance, as may be amended from time to time, any exhibits attached hereto and made a part hereof, and the regulatory and contractual relationship established hereby.
- 3.28) Franchise Fee.**
- (a) The term “Franchise Fee” includes any tax, fee, or assessment of any kind imposed by a franchising authority or other governmental entity on a cable operator or cable Subscriber, or both, solely because of their status as such;
 - (b) The term “Franchise Fee” does not include:
 - (1) 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);
 - (2) In the case of any Franchise in effect on October 30, 1984, any payments which are required by the Franchise to be incurred by the cable operator for public, educational, or governmental access facilities;
 - (3) 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
 - (4) Any fee imposed under Title 17.
- 3.29) GAAP** shall mean generally accepted accounting principles.
- 3.30) Grantee** shall mean CMS-RUS, Inc., an Indiana corporation, its agents and employees, and its lawful successors, transferees or assignees.
- 3.31) Gross Revenues** shall mean any and all revenues arising from or attributable to, or in any way derived directly or indirectly by the Grantee or its Affiliates, subsidiaries, or parent, or by any other entity that is a cable operator of the System, from the operation of the

Grantee's System to provide Cable Services. Gross Revenues shall include, but shall not be limited to:

- (a) Revenues from Cable Services, other service, monthly fees for programming offered on a per-channel, or per-program basis;
- (b) Revenues from installation, disconnection, reconnection, and change-in-service fees; Lockout Device fees; Leased Access Channel fees; late fees, upgrade and downgrade fees, and administrative fees; revenues from fees, rentals or sales of set-top boxes, Lock Out Devices, or other equipment; advertising revenues from advertising carried on the Cable System or in Subscriber bills or any other medium; interest; revenues from program guides; Franchise Fees;
- (c) Revenues to the System from home shopping, bank-at-home channels and other revenue sharing arrangements;
- (d) Grantee shall market any "bundled" services to fairly reflect an appropriate and reasonable division of services among the various services offered. Revenues from the sale of such bundled services shall be apportioned for purposes of the Cable Franchise in such manner that an amount equal to the Cable Franchisee's usual and customary charge for Cable Service alone shall be included in "Gross Revenues;" provided, however, if a Grantee discounts the cost or otherwise receives reduced revenue from the sale of such bundled service, the amount attributable to "Gross Revenues" shall be reduced on a pro rata basis equal to the percentage difference between the costs for the bundled and unbundled service components. For purposes of Franchise fee computation purposes, the discount shall be in accordance with the following example:
 - (1) Assume a Subscriber's charge for a given month for Cable Service alone would be \$40, for local telephone service alone would be \$30 and for long distance service alone would be \$30, for a total of \$100. In fact, the three (3) services are offered in effect at a combined rate where the Subscriber receives a twenty percent (20%) discount from the rates that would apply to a service if purchased individually. The discount (here, \$20) for Franchise Fee computation purposes would be applied pro rata so that for such purposes, Gross Revenues for the provision of Cable Service would be deemed to be \$32 (\$40 less 20%). The result would be the same if the Subscriber received a \$20 discount only for telephone service on the condition that he or she also subscribes or is a Subscriber to Cable Service and/or long distance service nonbundled standard rates.
- (e) To the maximum extent permitted by Applicable Law, revenues derived from the provision by Grantee or any Affiliate thereof of Internet access, cable modems and/or other Internet-related services.

Gross Revenues shall not include: (i) to the extent consistent with GAAP, actual Bad Debt write-offs, provided, however, that all or part of any such actual Bad Debt that is written

off but subsequently collected shall be included in Gross Revenues in the period collected; (ii) any taxes on services furnished by the Grantee imposed by any municipality, state or other governmental unit, provided that Franchise Fees shall not be regarded as such a tax; (iii) FCC regulatory fees; (iv) Subscriber credits, adjustments or refunds; or (v) refundable Subscriber deposits.

This definition shall be deemed to include all gross receipts and revenues to the fullest extent permitted by Applicable Law.

- 3.32) **Headend** shall mean any facility for signal reception and dissemination on a Cable System, including cables, antennas, wires, satellite dishes, monitors, switchers, modulators, processors for broadcast signals, equipment for the Interconnection of the Cable System with adjacent Cable Systems and Interconnection of any networks which are part of the Cable System, and all other related equipment and facilities.
- 3.33) **Initial Service Area** shall mean a geographic area that represents at least eighty-five percent (85%) of the Dwelling Units in the Franchise Area.
- 3.34) **Installation** shall mean the connection of the System from feeder cable to the point of connection with the Subscriber set-top box or other terminal equipment.
- 3.35) **Interconnect or Interconnection** shall mean the linking of the Cable System with another Cable System, communications system in a manner that permits the transmission and receiving of electronic and optical signals between the Cable System and other Cable System, communications system.
- 3.36) **Leased Access Channel** shall mean channels on the System which are designated or dedicated for use by a Person unaffiliated with the Grantee pursuant to 47 U.S.C. § 532.
- 3.37) **Local** shall mean within the City of Northfield, Minnesota.
- 3.38) **Lockout Device** shall mean 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.
- 3.39) **Noncommercial** shall mean, in the context of PEG Channels that particular products and services are not promoted or sold. This term shall not be interpreted to prohibit a PEG Channel operator or programmer from soliciting and receiving financial support to produce and transmit Video Programming on a PEG Channel, or from acknowledging a contribution. An acknowledgement shall not be in the form of an advertisement of goods and service.
- 3.40) **Normal Business Hours** shall mean those hours during which most similar businesses in City are open to serve customers. In all cases, "Normal Business Hours" shall include some evening hours at least one night per week and some weekend hours.
- 3.41) **Normal Operating Conditions** shall mean those service conditions that are within the control of the Grantee. Conditions that are ordinarily within the control of the Grantee

include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, maintenance, or upgrade of the System. Conditions that are not within the control of the Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions.

- 3.42) **Other Programming Service** shall mean information that Grantee makes available to all Subscribers generally.
- 3.43) **PEG** shall mean public, educational, and governmental.
- 3.44) **Person** shall mean any individual, partnership, association, joint stock corporation, joint venture, domestic or foreign corporation, stock or non-stock corporation, limited liability company, professional limited liability corporation, or other organization of any kind, or any lawful successor or transferee thereof, but such term does not include the City.
- 3.45) **Public Property** shall mean any property owned by the City other than a street or Sidewalk.
- 3.46) **Resident** shall mean any Person residing in the City as otherwise defined by Applicable Law.
- 3.47) **Residential Subscriber** shall mean any Person who receives Cable Service delivered to Dwelling Units or Multiple Dwelling Units.
- 3.48) **Right-of-Way or Rights-of-Way** shall mean the surface, air space above the surface and the area below the surface of any public street, highway, lane, path, alley, Sidewalk, avenue, boulevard, drive, court, concourse, bridge, tunnel, park, parkway, skyway, waterway, dock, bulkhead, wharf, pier, easement or similar property or waters within the City owned by or under control of the City, or dedicated for general public use by the City, including, but not limited to, any riparian right, which, consistent with the purposes for which it was created, obtained or dedicated, may be used for the purpose of installing, operating and maintaining a System. No reference herein to a “Right-of-Way” shall be deemed to be a representation or guarantee by the City that its interest or other right to control or use such property is sufficient to permit its use for the purpose of installing, operating and maintaining the System.
- 3.49) **Right-of-Way Ordinance** shall mean any ordinance of the City codifying requirements regarding regulation, management and use of Rights-of-Way in the City, including registration, fees, and permitting requirements.
- 3.50) **Service/Franchise Area** shall mean the entire geographic area within the City as it is now constituted or may in the future be constituted.
- 3.51) **Service Interruption** shall mean the loss of picture or sound on one or more Channels on the System.

- 3.52) **Sidewalk** shall mean that portion of a highway, other than the roadway, set apart by curbs, barriers, markings or other delineation for pedestrian travel, including parkways, not on private lands.
- 3.53) **Standard Installation** shall mean any residential Installation that can be completed using a Drop of two hundred (200) feet or less.
- 3.54) **State** shall mean the State of Minnesota, its agencies and departments.
- 3.55) **Subscriber** shall mean any Person who lawfully receives service via the System. In the case of multiple office buildings or Multiple Dwelling Units, the term “Subscriber” means the lessee, tenant or occupant.
- 3.56) **Tier** shall mean a group of Channels for which a single periodic subscription fee is charged.
- 3.57) **Two-Way** shall mean that the Cable System is capable of providing both Upstream and Downstream transmissions.
- 3.58) **Upstream** shall mean carrying a transmission to the Headend from remote points on the Cable System or from Interconnection points on the Cable System.
- 3.59) **Video Programming** shall mean programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

ARTICLE 4. GRANT OF FRANCHISE

4.1) Grant of Authority and General Provisions.

- (a) **Grant of Franchise.** This Franchise is granted pursuant to the terms and conditions contained herein.
- (b) **Franchise Required.** It shall be unlawful for any person to construct, operate or maintain a Cable System or provide Cable Service in the City unless such person shall first obtain and hold a valid franchise.
- (c) **Grant of Nonexclusive Authority.**
- (1) The Grantee shall have the right and privilege pursuant to this Franchise, subject to the requirements of any applicable ordinance, rule or procedure, to construct, erect, maintain, and operate a Cable System in, upon, along, across, above, over and under the Rights-of-Way in the City and shall have the right and privilege to provide Cable Service. The System constructed and maintained by Grantee or its agents shall not interfere with other uses of the Rights-of-Way. Grantee shall make use of existing poles and other above and below ground facilities available to Grantee to the extent it is technically and economically feasible to do so.

- (2) Grantee shall have the obligation to provide Cable Service over its Cable System as a condition to the grant of this Franchise. To the extent permitted under Applicable Law, Grantee shall further have the right to provide information services as defined in federal law as may be amended from time-to-time, telephone services regulated pursuant to Minn. Stat § 237.01 et seq., and telecommunications services as defined in federal law as may be amended from time to time. Both the City and Grantee hereby reserve all rights under Applicable Law regarding the provision of and regulation of non-Cable Services.
- (3) Notwithstanding the above grant to use Rights-of-Way, use of such Rights-of-Way shall not be inconsistent with the terms and conditions by which such Rights-of-Way were dedicated and with all legal requirements related to the use of such Rights-of-Way, including the terms and conditions of any applicable Rights-of-Way ordinance. This provision in no way limits Grantee's rights pursuant to Minn. Stat. § 238.35.
- (4) This Franchise shall be nonexclusive and subject to the provisions of Minn. Stat., § 238.08, Subdivision 1(b). Additional cable franchises granted by the City shall be granted the substantially similar terms and conditions.
- (d) **Lease or Assignment Prohibited.** No person may lease Grantee's System for the purpose of providing Cable Service until and unless such Person shall have first obtained and shall currently hold a valid franchise.
- (e) **Compliance with Applicable Laws, Resolutions and Ordinances.** The Grantee shall at all times during the term of this Franchise be subject to all lawful exercise of the police power, statutory rights, Local ordinance-making authority and eminent domain rights of the City. This Franchise shall comply with Minnesota franchise standards contained in Minn. Stat. § 238.084 et seq.
- (f) **Territorial Area Involved.** This Franchise is granted for the corporate boundaries of the City, as it exists from time to time. Grantee shall deploy Cable Services throughout the Initial Service Area no later than two (2) years from the start of physical construction of the System. In the event of annexation by City, or as development occurs, any new territory shall become part of the territory for which this Franchise is granted, provided, however, that Grantee shall not be required to extend Cable Service beyond the Initial Service Area unless there is a minimum density equivalent of thirty (30) homes per cable mile. Additionally, Grantee shall extend Cable Service to any other areas or persons requesting service outside of the Initial Service Area at a cost equal to the construction costs, including material, labor and any necessary easements, per mile multiplied by a fraction whose numerator equals the actual number of homes per mile, and whose denominator equals thirty (30) homes. Those persons wishing to become Subscribers and requesting Service will bear the remainder of the construction costs on a pro rata basis. The Grantee may require that the payment of these costs by such potential Subscribers be made in advance. Access to Cable Service shall not be denied to

(g) **Written Notice.** All notices, reports or demands required to be given in writing under this Franchise shall be deemed to be given when delivered personally to any officer of Grantee or City's administrator of this Franchise or seventy-two (72) hours after it is deposited in the United States mail in a sealed envelope, with registered or certified mail postage prepaid thereon, addressed to the party to whom notice is being given, as follows:

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

(h) **Drops to Public Buildings.**

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franchising authorities served by the Grantee in the state of Minnesota, and only then following one-hundred (120) days advance written notice to City.

- (3) The City shall have right to discontinue receipt of all or a portion of the Complimentary Service provided by Grantee in the event Grantee elects to charge or offset the value of Complimentary Service as set forth herein. In no case shall Grantee offset the value of Complimentary Service provided to schools and public libraries during the term of this Franchise.

- (i) **Redistribution of Service.** Redistribution of the free Basic Cable Service provided pursuant to this section shall be allowed with the Grantee's prior written consent or for educational purposes. At the City or institution's request, said institution may add outlets at its own expense, as long as such Installation meets applicable FCC technical standards. Drops to subsequently designated institutions in excess of two hundred (200) feet shall be provided by the Grantee at the cost of Grantee's time and materials less the cost of the two hundred (200) feet closest to the building. Grantee shall have one (1) year from the date of the City designation of additional institution(s) to complete construction of the Drop and outlet.

4.2) Franchise Term. This Franchise shall be in effect for a period of ten (10) years, such term commencing on the Effective Date specified herein, unless sooner renewed, extended, revoked or terminated as herein provided.

4.3) Right-of-Way Ordinance. The Grantee shall comply with the terms of any City ordinance, agreement or regulation of general applicability which addresses usage of the Rights-of-Way within the City which may have the effect of superseding, modifying or amending the terms herein.

4.4) Rules of Grantee. The Grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable said Grantee to exercise its rights and perform its obligations under this Franchise and Applicable Law, and to assure uninterrupted service to each and all of its Subscribers; provided that such rules, regulations, terms and conditions shall not be in conflict with provisions hereto, the rules of the FCC, the laws of the State of Minnesota, the City, or any other body having lawful jurisdiction.

ARTICLE 5. GENERAL RIGHT-OF-WAY USE AND CONSTRUCTION

5.1) Construction Standards. During construction of the System in the Initial Service Area the following standards shall apply.

- (a) **Construction Permits.** Grantee shall comply with Chapter 70 of the City Code. The City and Grantee agree that the permit application requirements set forth at: [Building Permit Application Process | Northfield, MN - Official Website](#) and Exhibit C set forth all of the information the Grantee will be required to submit to the City to obtain a construction permit from the City. Further, City agrees that Exhibit C attached hereto satisfies the requirements of Chapter 70 of the City Code. Within thirty (30) days of the submittal of a complete application for a construction

permit, the City will issue Grantee a blanket construction permit to install aerial and underground facilities within City Right-of-Ways. Each blanket construction permit will cover a large geographic area of the City consisting of up to one thousand (1,000) homes and/or businesses. Submission of blanket construction permits shall be staggered to allow the City adequate time for review. The City has requested, and Grantee has agreed to provide, fiber connections to City owned facilities as specified in a separate agreement between the parties ("Fiber Agreement"). As consideration for the Fiber Agreement, the City shall not charge Grantee any permitting fees for the initial construction of the System so long as the terms of the Fiber Agreement are met by Grantee. If Grantee fails to comply with the Fiber Agreement, Grantee agrees to promptly pay the City permit fees, at the City's then current rates, for all previously submitted permit applications and, thereafter, shall pay the City permit fees for all future permit applications. The City and Grantee shall undertake all reasonable steps, to meet its obligations under this paragraph.

(b) **Utility Poles.** Subject to the following requirements, Grantee will have the ability to place utility poles in the City Rights-of-Way on a limited basis:

- (1) Grantee shall not install a utility pole in any areas of the City where all of the utilities are located underground;
- (2) Grantee must demonstrate to the City that it is unable to use an existing utility pole in the general area where it wishes to place a utility pole due to commercially unreasonable make ready costs or excessive delays gaining access to the existing utility poles;
- (3) any requested utility pole will be permitted temporarily for a mutually agreed upon, reasonable period of time, until the line can be moved to the existing utility pole.
- (4) any requested temporary utility pole will be located on the same side of the road as an existing utility pole line;
- (5) Grantee will make reasonable accommodations requested by the City to improve the aesthetics of a requested temporary utility pole in the area where it is to be located;
- (6) the location of a requested utility pole will not adversely affect the health, safety or welfare of any person;
- (7) Grantee will make the requested utility pole available to any other communications provider on just and reasonable terms subject to loading requirements and space availability;
- (8) If a utility company installs a new utility pole that will accommodate Grantee's facilities in any area where Grantee has installed a utility pole, provided Grantee has access to the new utility pole under reasonable terms

and conditions, within a reasonable time period after being notified by the City, Grantee will move its facilities to the new utility pole and will remove the Grantee utility pole from the Right-of-Way.

- (c) **Underground Construction.** When installing its facilities underground, Grantee will install its fiber utilizing boring technology and procedures. In areas with high construction costs and/or where the deployment of conduit is not cost effective or feasible, on a case-by-case basis, subject to City approval, which approval will not be arbitrarily, discriminatorily, or unreasonably withheld, conditioned or delayed, Grantee may install its fiber utilizing open trench technology and procedures.
- (d) **Restoration.** Consistent with Chapter 70 of City Code, Grantee shall have the right to pothole in a paved driveway, Sidewalk, trail or street to located other buried utilities. Grantee shall not be required to remove and replace full or half street sections as a result of pothole operations. In extraordinary circumstances, removal of full joint to joint panels may be warranted. Grantee shall use commercially reasonable standards and efforts to restore any driveway, walkway or street to the same, or substantially similar, condition that existed before Grantee's excavation. Grantee will use commercially reasonable efforts to restore property within three (3) business days of the boring, subject to factors beyond Grantee's reasonable control. Consideration will be given to the amount of restoration needed with each boring and Grantee will endeavor to conduct borings in a manner which requires the least amount of restoration (e.g. when appropriate using streets and Sidewalks for equipment rather than lawns, etc.). After boring under the street/curb and Sidewalks, Grantee will inspect for any heaving that may have occurred from the boring process. City reserves its right to inspect Grantee's restoration work in accordance with Chapter 70 of the City Code. Any disputes Grantee may have with property owners shall not serve to delay the City's processing of permits for construction of the System.
- (e) **Construction Communications Plan.** Grantee will implement a construction communications plan and will use commercially reasonable efforts to meet the following timelines and standards, as they relate to each approved permit application area:
 - (1) At least thirty (30) days, but no more than forty-five (45) days, prior to the commencement of construction in a residential area, Grantee will send a detailed letter to the residential addresses in that area advising occupants of upcoming construction activities.
 - (2) At least fourteen (14) days, but no more than thirty (30) days, prior to the commencement of construction in a residential area, Grantee will send postcard reminder to the residential addresses in that area reminding occupants of upcoming construction activities.
 - (3) At least three (3) days, but no more than seven (7) days, prior to the commencement of construction in a residential area, Grantee will send out

street teams to place signs in the yards of those residential properties where Grantee will commence with construction activities.

- (4) Each communication sent to a residential address will include the URL to Grantee's construction website: metronetinc.com/construction. On this website Residents can find additional information regarding the construction plans in their area. Following construction, property owners will also be able to use this website to submit damage claims in the event Grantee inadvertently causes damage to their property.
- (f) **Work Hours.** Grantee and its contractors may perform construction activities including, but not limited to, boring, aerial construction, pulling cable, splicing and clean-up work ("Construction Activities") from 7 AM until 7 PM, Monday through Saturday. Grantee and its contractors may also perform limited Construction Activities with the exception of boring, the use of heavy equipment which may disrupt Residents, from 7 AM until 7 PM on Sundays.
- (g) **Conditions of Right-of-Way Use.**
 - (1) Nothing in this Franchise shall be construed to prevent the City from adopting and enforcing requirements for the usage of Rights-of-Way or from constructing, maintaining, repairing or relocating sewers; grading, paving, maintaining, repairing, relocating and/or altering any Right-of-Way; constructing, laying down, repairing, maintaining or relocating water mains; or constructing, maintaining, relocating or repairing any Sidewalk or other public work.
 - (2) All system transmission and distribution structures, lines and equipment erected by the Grantee shall be located so as not to obstruct or interfere with the use of Right-of-Way and to cause minimum interference with the rights of property owners who abut any of said Right-of-Way and not to interfere with existing public utility installations. The Grantee shall furnish to and file with the City the maps, GIS data and permanent records of the location and character of all facilities constructed, including underground facilities and Grantee shall file with the City updates of such maps, plats and permanent records annually if changes have been made in the System and shall at all times comply with Section 70-112 of the City Code.
 - (3) The Grantee shall not place poles, conduits or other fixtures of the System above or below ground where the same will interfere with any gas, electric, telephone, water or other utility fixtures and all such poles, conduits or other fixtures placed in any Right-of-Way shall be so placed as to comply with all requirements of the City. Grantee shall utilize existing poles, conduits or other wire-holding structures of existing utilities to the extent technically and economically feasible. City shall have no obligation to assist Grantee in obtaining the consent for use of existing facilities from any utility company.

- (4) 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.
- (h) **Undergrounding of Cable.** Grantee must place newly constructed facilities underground in areas of the City where all other utility lines are placed underground. Grantee shall be allowed to locate its underground facilities at a depth of 18" to 24" in the Right-of-Way and at a depth of 36" under a street unless there are other facilities located at or near that depth or locating at that depth will pose a safety hazard. Amplifier boxes and pedestal mounted terminal boxes may be placed above ground if existing technology reasonably requires but shall be of such size and design and shall be so located as not to be unsightly or unsafe, all as may be approved by the City in accordance with applicable requirements.
- (i) **Cable Drop Burial.** Grantee shall bury all Drops to Subscribers' dwellings in a reasonable time period, which shall not exceed twenty-five (25) business days, subject to weather conditions and the completion of required utility locate. In the event the ground is frozen or otherwise unsuitable to permit immediate burial, Grantee shall be permitted to delay such burial until the ground becomes suitable for burial which in no event shall be later than June 30th.
- (j) **Erection, Removal and Joint Use of Poles.** No poles, conduits, amplifier boxes, pedestal mounted terminal boxes, similar structures, or other wire-holding structures shall be erected or installed by the Grantee without prior approval of the City with regard to location, height, type and other pertinent aspects.
- (k) **Safety Requirements.**
- (1) The Grantee shall at all times employ ordinary and reasonable care and shall install and maintain in use nothing less than commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public.
- (2) The Grantee shall install and maintain its System and other equipment in accordance with all Applicable Laws and regulations, and the requirements of the National Electric Safety Code and in such manner that they will not interfere with private radio, police and fire communications or any installations of the City or of any public utility serving the City.
- (3) All System structures and lines, equipment and connections in, over, under and upon the Rights-of-Way, wherever situated or located, shall at all times be kept and maintained in good condition, order and repair so that the same shall not menace or endanger the life or property of the City or any person.
- (l) **Emergency Use of Facilities.** In the case of any emergency or disaster, the Grantee shall, upon the request of the City, make available its facilities to City during the period of emergency or disaster.

- 5.2) State and Local Law.** The Grantee shall strictly adhere to all State and Local laws, regulations and policies adopted by the City applicable to the location, construction, installation, operation or maintenance of the System in the City. The City has the right to supervise all construction or Installation work performed in the Rights-of-Way as it shall find necessary to ensure compliance with the terms of this Franchise and Applicable Law. Failure to obtain permits or to comply with permit requirements shall be grounds for revocation of this Franchise, or any lesser sanctions provided herein or in any other Applicable Law, code or regulation.
- 5.3) General Standard of Care.** Grantee shall erect and maintain all parts of the System in good condition and in accordance with industry standards, good engineering practices and manufacturer specifications throughout the entire Franchise term. All work authorized and required hereunder shall be done in a safe, thorough and workmanlike manner. All installations of equipment shall be permanent in nature, durable and installed in accordance with good engineering practices.
- 5.4) Permits Required for Construction.** Prior to doing any work in the Right-of-Way or other Public Property, Grantee shall apply for, and obtain, appropriate permits from the City in accordance with Section 5.1(a) above. As part of the permitting process, the City may impose such conditions and regulations as are necessary for the purpose of protecting any structures in such Rights-of-Way, proper restoration of such Rights-of-Way and structures, the protection of the public, and the continuity of pedestrian and vehicular traffic. Such conditions may also include the provision of a construction schedule and maps showing the location of the facilities to be installed in the Right-of-Way. Grantee shall pay all applicable fees for the requisite City permits received by Grantee.
- 5.5) Emergency Permits.** In the event that emergency repairs are necessary, Grantee shall immediately notify the City of the need for such repairs. Grantee may initiate such emergency repairs without required permits and shall apply for appropriate permits within forty-eight (48) hours after discovery of the emergency.
- 5.6) GIS Mapping.** Grantee shall cooperate with the City regarding geographic information mapping systems for users of the Rights-of-Way.
- 5.7) Warning Devices.** The Grantee shall install and maintain such devices as will apprise or warn Persons using the Rights-of-Way of the existence of work being performed on the System in Rights-of-Way.
- 5.8) Prewiring.** Any ordinance or resolution of the City which requires prewiring of subdivisions or other developments for electrical and telephone service shall be construed to include wiring for Cable Systems.
- 5.9) Restoration of Rights-of-Way and Property.** The Grantee shall protect Rights-of-Way and public and private property from damage. When Grantee becomes aware of any damage, Grantee shall promptly notify the property owner within twenty-four (24) hours in writing (email communication is sufficient written notice). Any Rights-of-Way, or any sewer, gas or water main or pipe, drainage facility, electric, fire alarm, police

communication or traffic control facility of the City, or any other public or private property, which is disturbed, damaged or destroyed during the construction, repair, replacement, relocation, operation, maintenance, expansion, extension or reconstruction of the System shall be promptly and fully restored, replaced, reconstructed or repaired by the Grantee, at its expense, to the same condition as that prevailing prior to the Grantee's work, to the extent consistent with Chapter 70 of the City Code and Applicable Law. Unless required by Applicable Law, the City agrees not to interject in disputes between Grantee and other Right-of-Way users regarding damage to third party facilities or proper marking of facilities. Any disputes Grantee may have with property owners shall not serve to delay the City's processing of permits for construction of the System.

5.10) Use of Grantee Facilities. The City may install or affix and maintain wires and equipment owned by the City for City purposes in or upon any and all of Grantee's poles, ducts, conduits or equipment in the Rights-of- Way and other public places, without charge to the City or to the Grantee, to the extent space therein or thereon is reasonably available and has not been designated for future use by Grantee, does not interfere with Grantee's facilities, and is pursuant to all Applicable Law. For the purposes of this subsection, "City purposes" includes, but is not limited to, the use of the structures and installations for City fire, police, traffic, water, telephone, and/or signal systems, but not for Cable Service in competition with Grantee. Grantee shall not deduct the value of such use of its facilities from its Franchise Fee payments or from other fees payable to the City.

5.11) Protect, Support, Temporarily Disconnect, Relocate or Remove. Pursuant to Chapter 70 of the City Code and Applicable Law, Grantee shall, at its sole expense, protect, support, temporarily disconnect, relocate or remove any of its property when required by the City by reason of traffic conditions; public safety; Rights-of-Way construction; street maintenance or repair (including resurfacing or widening); change in Right-of-Way grade; construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, tracks or any other type of government-owned communications or traffic control system, public work or improvement of government-owned utility; Right-of-Way vacation; or for any other purpose where the convenience of the City would be served thereby.

5.12) Conduit Facility.

(a) For the purposes of this subsection:

- (1) "Attachment" means any optical fiber, coaxial cable or other wire, and any related device, apparatus or auxiliary equipment used to transmit or to support the transmission of voice, video or data.
- (2) "Conduit" or "Conduit Facility" means any structure, or section thereof, containing one or more poles, wireholding structures, ducts, conduits, manholes, handhole or other such facilities in Grantee's Cable System.
- (3) "Duct" means a single enclosed raceway for cables, fiber optics or other wires.

- (4) “Licensee” means any Person licensed or otherwise permitted by the City to use the Rights-of-Way.
 - (5) “Surplus Ducts or Conduits” are Conduit Facilities other than those occupied by Grantee or any prior Licensee, or unoccupied Ducts held by Grantee as emergency use spares, or other unoccupied Ducts that Grantee reasonably expects to use within two (2) years from the date of a request for use.
- (b) Grantee acknowledges that the Rights-of-Way have a finite capacity for containing Conduits. Therefore, Grantee agrees that whenever the City determines it is impracticable to permit construction of an underground Conduit system by any other Person which may at the time have authority to construct or maintain Conduits or Ducts in the Rights-of-Way, the City may require Grantee to afford to such Person the right to use Grantee’s Surplus Ducts or Conduits in common with Grantee, pursuant to the terms and conditions of an agreement for use of Surplus Ducts or Conduits entered into by Grantee and the Licensee. Nothing herein shall require Grantee to enter into an agreement with such Person if, in Grantee’s reasonable determination, such an agreement could compromise the integrity of the Grantees System and Property.
- (c) A Licensee occupying part of a Duct shall be deemed to occupy the entire Duct.
- (d) Grantee shall give a Licensee a minimum of one hundred twenty (120) days’ notice of its need to occupy a leased Conduit and shall propose that the Licensee take the first feasible action as follows:
 - (1) Pay revised Conduit rent designed to recover the cost of retrofitting the Conduit with multiplexing, fiber optics or other space-saving technology sufficient to meet Grantee’s space needs;
 - (2) Pay revised Conduit rent based on the cost of new Conduit constructed to meet Grantee’s space needs;
 - (3) Vacate the needed Ducts or Conduit; or
 - (4) Construct and maintain sufficient new Conduit to meet Grantee’s space needs.
- (e) When two (2) or more Licensees occupy a section of Conduit Facility, the last Licensee to occupy the Conduit Facility shall be the first to vacate or construct new Conduit. When Conduit rent is revised because of retrofitting, space-saving technology or when new Conduit is constructed, all Licensees occupying the Grantee’s ducts and conduits shall bear the increased cost.
- (f) All Attachments shall meet Local, State, and federal clearance and other safety requirements, be adequately grounded and anchored, meet the provisions of contracts executed between Grantee and the Licensee, and comply with Applicable

Law. Grantee may, at its option, correct any Attachment deficiencies and charge the Licensee for its costs, unless an agreement between the parties provides otherwise. Each Licensee shall pay Grantee for any fines, fees, damages or other costs the Licensee's attachments cause Grantee to incur, unless a contract between the parties provides otherwise. In all cases, a contract between the Grantee and Licensee shall provide that either the Grantee or the Licensee shall be responsible for payment of applicable fines, fees, damages or other costs owed to the City.

In order to enforce the provisions of this subsection with respect to Grantee, the City must demonstrate that it has required that all similarly situated users of the Rights-of-Way to comply with the provisions of this subsection.

- 5.13) Acquisition of Facilities.** Upon Grantee's acquisition of facilities in any Right-of-Way, or upon City annexation or acquisition of any area in which Grantee owns or operates any facility, Grantee shall, at the City's request, submit to the City a statement describing all facilities involved, whether authorized by franchise, permit, license or other prior right, and specifying the location of all such facilities to the extent Grantee has possession of such information. Such facilities shall immediately be subject to the terms of this Franchise if used to provide Cable Services.
- 5.14) Movement of Cable System Facilities For City Purposes.** The City shall have the right to require Grantee to relocate, remove, replace, modify or disconnect Grantee's facilities and equipment located in the Rights-of-Way or on any other property of the City in the event of an emergency or when reasonable public convenience requires such change (for example, without limitation, by reason of traffic conditions, public safety, Right-of-Way vacation, Right-of-Way construction, change or establishment of Right-of-Way grade, installation of sewers, drains, gas or water pipes, or any other types of structures or improvements by the City for public purposes). Such work shall be performed at the Grantee's expense. Except during an emergency where the City will endeavor to provide Grantee with as much prior notice as practical under the circumstances, the City shall provide reasonable notice to Grantee, not to be less than five (5) business days and allow Grantee with the opportunity to perform such action. In the event of any capital improvement project exceeding \$500,000 in expenditures by the City which requires the removal, replacement, modification or disconnection of Grantee's facilities or equipment, the City shall provide at least sixty (60) days written notice to Grantee. Following notice by the City, Grantee shall relocate, remove, replace, modify or disconnect any of its facilities or equipment within any Right-of-Way, or on any other property of the City. If the City requires Grantee to relocate its facilities located within the Rights-of-Way, the City shall make a reasonable effort to provide Grantee with an alternate location within the Rights-of-Way. If funds are generally made available to users of the Rights-of-Way for such relocation, Grantee shall be entitled to its pro rata share of such funds. If the Grantee fails to complete this work within the time prescribed and to the City's satisfaction, the City may cause such work to be done and bill the cost of the work to the Grantee, including all costs and expenses incurred by the City due to Grantee's delay. Within thirty (30) days of receipt of an itemized list of the City's costs, the Grantee shall pay the City.

- 5.15) Accommodation for Other Authorized Users.** If any removal, relaying or relocation is required to accommodate the construction, operation or repair of the facilities of a Person that is authorized to use the Rights-of-Way, the Grantee shall, after thirty (30) days' advance written notice and payment of all costs by such Person, commence action to effect the necessary changes requested by the responsible entity. If multiple responsible parties are involved, the City may resolve disputes as to the responsibility for costs associated with the removal, relaying or relocation of facilities among entities authorized to install facilities in the Rights-of-Way if the parties are unable to do so themselves, and if the matter is not governed by a valid contract between the parties or any State or federal law or regulation.
- 5.16) Temporary Changes for Other Permittees.** At the request of any Person holding a valid permit and upon reasonable advance notice, Grantee shall temporarily raise, lower or remove its wires as necessary to permit the moving of a building, vehicle, equipment or other item. The expense of such temporary changes must be paid by the permit holder, except when the permit holder is the City, in which case the Grantee shall move or remove its wiring free of charge, and Grantee may require a reasonable deposit of the estimated payment in advance.
- 5.17) Reservation of City Use of Right-of-Way.** Nothing in this Franchise shall be construed to prevent the City or public utilities owned, maintained or operated by public entities other than the City from constructing maintaining, repairing or relocating sewers; grading, paving, repairing relocating and/or altering any Right-of-Way; constructing, laying down, repairing maintaining, relocating, or removing any water mains; or constructing or establishing any other public work or improvement.
- 5.18) Tree Trimming.** To the extent consistent with generally Applicable Law, the Grantee shall have the right to remove, cut, trim and keep clear of its System trees or other vegetation in and along or overhanging the Rights-of-Way. However, in the exercise of this right, the Grantee agrees not to cut or otherwise injure said trees to any greater extent than is reasonably necessary. This Franchise does not give the Grantee any authority to remove trees on private property in the City. All trimming shall be performed at no cost to the City and City Residents.
- 5.19) Inspection of Construction and Facilities.** The City may inspect any of Grantee's facilities, equipment or construction at any time upon at least twenty-four (24) hours' notice, or, in case of emergency, upon demand without prior notice. The City shall have the right to charge generally applicable inspection fees therefor. If an unsafe condition is found to exist, the City, in addition to taking any other action permitted under Applicable Law, may order Grantee, orally or in writing, to make the repairs and alterations necessary to correct the unsafe condition by a time the City establishes. The City has the right to correct, inspect, administer and repair the unsafe condition if Grantee fails to do so, and to charge Grantee therefor.
- 5.20) Stop Work.**
- (a) On notice from the City that any work is being performed contrary to the provisions of this Franchise, or in an unsafe or dangerous manner as reasonably determined by

the City, or in violation of the terms of any applicable permit, laws, regulations, ordinances, or standards, the City shall notify Grantee and Grantee shall promptly correct such deficiencies and provide the City with reasonable assurances that there will be no similar violations in the future. If Grantee fails to make such corrections and provide such assurances to the City in a timely manner, the work may immediately be stopped by the City.

- (b) The stop work order shall:
 - (1) Be in writing;
 - (2) Be given to Grantee;
 - (3) Be sent to Grantee by overnight delivery at the address given herein;
 - (4) Indicate the nature of the alleged violation or unsafe condition; and
 - (5) Establish conditions under which work may be resumed.

ARTICLE 6. CABLE SYSTEM DESIGN, TECHNICAL STANDARDS AND TESTING

6.1) System Design.

- (a) Grantee shall develop, construct and continue to provide for the term of this Franchise a fiber-to-the-premises Cable System which is engineered and Activated so as to be capable of delivering a minimum of seventy-eight (78) video programmed Channels.
- (b) All programming decisions remain the discretion of Grantee; provided, however, that Grantee notifies the City and Subscribers in writing thirty (30) days prior to any Channel additions, deletions or realignments, and further subject to Grantee's signal carriage obligations hereunder and pursuant to 47 U.S.C. §§ 531-536, and further provided that Grantee may not eliminate, move or renumber any PEG Access Channel required hereunder without prior approval of the City which approval shall not be unreasonably withheld. Grantee shall conduct programming surveys from time to time to obtain input on programming decisions from Subscribers.

6.2) Operation and Maintenance of System. The Grantee shall render effective Service, make repairs promptly, and interrupt service only for good cause and for the shortest time practical. Such interruption, to the extent feasible, shall be preceded by notice in accordance with provisions herein and shall occur during periods of minimum use of the System.

6.3) Technical Standards. The technical standards used in the operation of the System shall comply, at a minimum, with all technical standards applicable to fiber-to-the-premises networks as promulgated by the FCC relating to Cable Systems pursuant to Code of Federal

Regulations 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.

6.4) Special Testing.

- (a) The City may require Grantee to conduct special testing of a location or locations within the System or the System as a whole. Demand for such special tests may be made on the basis of Complaints received or other evidence indicating an unresolved controversy or noncompliance.
- (b) 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.
- (c) Nothing in this Section 6.4 shall waive the City's right to enforce Company's compliance with the requirements of the City Code.

6.5) FCC Reports. To the extent applicable to Grantee's Cable System, the results of any tests required to be filed by Grantee with the FCC shall also be copied to the City within ten (10) days of the conduct of such tests.

6.6) Lockout Device. Upon the request of a Subscriber, Grantee shall provide a Lockout Device.

ARTICLE 7. CUSTOMER SERVICE

7.1) Service Provisions.

(a) Regulation of Service Rates.

- (1) A list of Grantee's current Subscriber rates and charges shall be maintained on file with the City and shall be available for public inspection. Grantee shall give the City and Subscribers written notice of any change in a rate or charge no less than thirty (30) days prior to the effective date of the change. For purposes of this section, the availability of this information on Grantee's website shall constitute compliance.
- (2) Non-Standard Installations. Grantee shall install and provide Cable Service to any person requesting other than a Standard Installation provided that said Cable Service can meet FCC technical specifications. In such case, Grantee may charge for the incremental increase in material and labor costs incurred beyond the Standard Installation.
- (3) Sales procedures. Grantee in its initial face-to-face communication with a non-Subscriber, Grantee shall inform the non-Subscriber of all levels of Service available by providing a rate card outlining all available Services and rates.

- (4) Telephone inquiries and Complaints.
- (b) **Availability.** Grantee will maintain a toll-free customer service number or collect call telephone access lines which will be available to its Subscribers twenty-four (24) hours a day, seven (7) days a week, so as to receive Subscriber Complaints, requests and inquiries. During Normal Business Hours, trained representatives of Grantee shall be available to respond to Subscriber inquiries. Grantee will ensure that: (1) an adequate number of trained company representatives will be available to respond to customer telephone inquiries during Normal Business Hours, and; (2) after Normal Business Hours, the access line may be answered by a service or an automated response system, including an answering machine. Further, inquiries received after Normal Business Hours must be responded to by a trained company representative on the next business day.
- (c) **Telephone answer time and busy signals.** Under Normal Operating Conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds after the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time under Normal Operating Conditions, measured on a quarterly basis. Under Normal Operating Conditions, the customer will receive a busy signal less than three (3) percent of the time.
- (d) **Installation, outage and service calls.** The following customer service standards shall apply once Grantee provides Cable Service to its first Subscriber in the City. Under Normal Operating Conditions, each of the following standards will be met no less than ninety-five (95) percent of the time measured on a quarterly basis:
- (1) Installations will be performed within seven (7) business days after an order has been placed.
 - (2) Grantee will begin working on Service Interruptions promptly, in no event later than twenty-four (24) hours after the interruption becomes known, and Subscriber requests for repairs shall be commenced within twenty-four (24) hours of the request unless conditions beyond the control of Grantee prevent such performance.
 - (3) The appointment window alternatives for Installations, service calls and other Installation activities will be either a specific time or, at maximum, a four (4) hour time block during Normal Business Hours. The Grantee may schedule service calls and other Installation activities outside of Normal Business Hours for the 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 a representative of Grantee is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, Grantee will use commercially reasonable efforts to contact the customer. The

appointment will be rescheduled, as necessary, at a time convenient for the customer.

- (6) **Complaint and Other Service Records.** Subject to Grantee's need to maintain the privacy of certain information, Grantee shall prepare and maintain written records of all Complaints received 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 written request, provide the City with a written summary of such Complaints and their resolution. Grantee will also provide, upon written request, detailed compliance reports with respect to the objectively measurable service standards herein in a form mutually agreed upon.
- (e) **Billing and Subscriber communications.** Grantee must give Subscribers thirty (30) days advance written notice with copy to City before any changes in rates, programming services, or Channel positions. Bills must be clear, concise and understandable, with itemization of all charges for services, equipment charges and any optional services, charges and other activity during the billing period. In case of a billing dispute, the Grantee must respond to a written Complaint from a Subscriber within thirty (30) days.
- (f) **Refunds and credits.** In the event a Subscriber establishes or terminates Service and receives less than a full month's service, Grantee shall prorate the monthly rate on the basis of the number of days in the period for which Service was rendered to the number of days in the billing. Refund checks will be issued promptly, but no later than thirty (30) days after the return of the equipment supplied by the Grantee if Service is terminated. If Service is interrupted or discontinued for a total of more than forty-eight (48) hours in any thirty (30) day period, Subscribers shall be credited pro rata for such interruption beginning with the date of interruption. Credits will be issued no later than the Subscriber's next billing cycle following the determination that a credit is warranted.
- (g) **Late fees.** Fees for the late payment of bills shall not accrue until the normal billing cut-off for the next month's Service and in no event less than after the unpaid bill in question was sent to the Subscriber. Payments at the Grantee's drop-box location shall be deemed received on the date such payments are picked up by the Grantee, which shall occur within twenty-four (24) hours after every due date. The Grantee shall continue to provide a grace period of at least five (5) days after each due date. Late fees shall not exceed the Grantee's actual and demonstrable costs associated with collection of late payments.
- (h) **Additional Customer Service Requirements.** The City expressly reserves authority to adopt additional or modified customer service requirements to address Subscriber concerns or Complaints in accordance with Applicable Law.

7.2) Time Schedule for Installations and Service. The Grantee shall schedule appointments for Installations and other service calls either at a specific time or, at a maximum, during a

four (4) hour time block during Normal Business Hours, (Normal Business Hours shall be no less than 9:00 a.m. to 5:00 p.m., Monday through Friday, and 9:00 a.m. to 1:00 p.m. on Saturdays). The Grantee may also schedule service calls outside such hours for the convenience of customers. The Grantee shall use its best efforts to not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

If the installer or technician is late and will not meet the specified appointment time, he/she must use his/her best efforts to contact the customer and reschedule the appointment at the sole convenience of the customer. Service call appointments must be met in a manner consistent with FCC standards.

- 7.3) Response to Written Complaints.** The Grantee shall respond to written Complaints from the City within twenty-four (24) hours and provide a copy of each response to the City within five (5) days. In addition, the Grantee shall respond to all written Complaints from Subscribers within five (5) days of receipt of the Complaint. If the City notifies Grantee of the Subscriber complaint or the Subscriber copies the City on the complaint, Grantee shall provide the City with a copy of Grantee's response to the complaint.
- 7.4) Subscriber Contracts.** At the written request of the City the Grantee shall provide to the City any standard form Subscriber contract utilized by Grantee. If no such written contract exists, the Grantee shall file with the City a document completely and concisely stating the length and terms of the Subscriber contract offered to customers. For purposes of this section, the availability of this information on Grantee's website shall constitute compliance.
- 7.5) Exclusive Contracts and Anticompetitive Acts Prohibited.** The Grantee may not require a Residential Subscriber to enter into an exclusive contract as a condition of providing or continuing Cable Service.
- 7.6) Bill Payment/Customer Service.** The Grantee shall offer Subscribers multiple way to pay their bill through direct debit, on-line payment or mailing their payment to Grantee. The Grantee shall maintain an adequate number of local, toll-free telephone access lines which will be available to its Subscribers twenty-four (24) hour per day, seven (7) days a week, so as to receive Subscriber inquiries, requests and Complaints.

ARTICLE 8. ACCESS

8.1) Public, Educational and Governmental Access.

(a) Public, Educational and Government Access.

- (1)** The City or its Designated Access Provider is hereby designated to operate, administer, promote, and manage community programming (public, education, and government programming) (hereinafter "PEG Access") in the Cable System.

- (2) Grantee shall dedicate three (3) video Channel(s) available exclusively for PEG Access use ("PEG Channels"). All Residential Subscribers who receive all or any part of the total services offered on the System shall be eligible to receive such Channels at no additional charge. The Channel(s) shall be Activated upon the Effective Date of this Franchise and thereafter maintained. The City may rename, reprogram, or otherwise change the use of these Channels in its sole discretion, provided such use is Noncommercial and retains the general purpose of the provision of community programming. Nothing herein shall diminish the City's rights to secure additional Channels pursuant to Minn. Stat. § 238.084, which is expressly incorporated herein by reference. The City shall provide ninety (90) days prior written notice to Grantee of City's intent to Activate Access Channels and shall allow Grantee reasonable time to vacate said Channel(s).
- (3) The Grantee shall have the right to program one (1) of the PEG Channels until such time as the City notifies the Grantee that it wishes to assume programming responsibilities. Upon receiving notification from the City, the Grantee shall, within three (3) months, discontinue routing video signals onto the PEG Channel, and take all steps necessary to permit the City to begin cablecasting Noncommercial PEG programming on the Channel.
- (4) The VHF spectrum must be used for the PEG Access Channel(s) required in this section. Grantee shall designate the Channel locations of any other Access Channel(s) but may not move or otherwise change the Channel number or location of any PEG Access or community program Channel without the written approval of the City, which approval shall not be unreasonably withheld.
- (5) Any PEG Channel shall not be relocated without the consent of the City which consent shall not be unreasonably withheld. If the City agrees to change the Channel designation for any PEG Channel, the Grantee must provide at least three (3) months' notice to the City prior to implementing the change, and shall reimburse the City and/or PEG entity for any reasonable costs incurred for: (i) purchasing or modifying equipment, business cards and signage; (ii) any marketing and notice of the Channel change that the City reasonably determines is necessary; (iii) logo changes; and (iv) promoting, marketing and advertising the Channel location of the affected PEG Channel(s) during the three (3) month period preceding the effective date of the Channel change, unless otherwise agreed upon in writing by the parties.
- (6) The Grantee shall provide, install and maintain (at no cost to the City) all equipment, facilities and software up to the Demarcation Point necessary to allow the City to independently insert PEG programming on the PEG Channel(s). If the City requests return of either or both of the loaned Channels identified above, the obligation described in this subsection shall at that time apply to the identified Channel(s) as well.

- (7) At all times, the Grantee's Cable System must make the PEG Access Channels available to all Basic Cable Service Subscribers residing within the City.
- (8) In the event the Grantee makes any change in the System and related equipment and facilities or in signal delivery technology, which change directly or indirectly causes the signal quality or transmission of PEG Channel programming or PEG services to fall below technical standards under Applicable Law, the Grantee shall, at its own expense, provide any necessary technical assistance, and training of PEG personnel, and in addition, provide necessary technical assistance so that PEG facilities may be used as intended, including, among other things, so that live and taped programming can be cable casted efficiently to Subscribers.
- (9) Grantee shall not be required to carry a PEG Access Channel in a higher quality format than that of the signal delivered to Grantee, but Grantee shall not implement a change in the method of delivery of Access Channels that results in a material degradation of signal quality or impairment of viewer reception of Access Channels, provided that this requirement shall not prohibit Grantee from implementing new technologies also utilized for commercial Channels carried on its Cable System. Grantee shall meet FCC signal quality standards when offering Access Channels on its Cable System and shall continue to comply with closed captioning pass-through requirements. There shall be no significant deterioration in an Access Channels signal from the point of origination Upstream to the point of reception Downstream on the Cable System. Grantee shall distribute the PEG Access Channel signal without degradation and consistent with the manner in which Grantee delivers the average commercial channel.
- (10) Within twenty-four (24) hours of a written request from City to the Grantee identifying a technical problem with a Access 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.
- (11) Grantee agrees that if it utilizes a visual interface under its control on its Cable System for all Channels, the PEG Access Channels shall be treated in a non-discriminatory fashion consistent with Applicable Laws so that Subscribers will have ready access to PEG Access Channels. Within sixty (60) days of the Effective Date, Grantee will make available to City the ability to place PEG Access Channel programming information on the interactive Channel guide via the electronic programming guide ("EPG") vendor ("EPG provider") that Grantee utilizes to provide the guide service.

Grantee will be responsible for providing the designations and instructions necessary for the PEG Access Channels to appear on the EPG. All costs and operational requirements for the EPG provider shall be the responsibility of the City. Grantee is not responsible for operations of the EPG provider. Grantee shall, to the maximum extent possible, make available to the City any price discounts Grantee may have in place with third party vendors that offer such programming guide services.

- (12) Grantee shall maintain, free of charge with no transport costs or other fees imposed, the following fiber path to facilitate PEG origination/return capacity between:

- 1. City Hall

- (13) All PEG Channels shall be transmitted in the same format as all other Basic Cable Service Channels and shall be carried on the Basic Cable Service Tier.

- (14) The Grantee shall provide Leased Access Channels as required by Applicable Law.

(b) Digital and HD PEG Carriage Requirements.

- (1) Grantee shall provide, free of charge, the PEG Channels in a standard digital (“SD”) format on the Basic Cable Service Tier or the lowest Tier of Service offered by Grantee. Nothing herein precludes the Grantee from charging for any equipment needed for Basic Cable Service.

- (2) The City may provide a written request to Grantee that one (1) SD PEG Channel be converted to a high definition (“HD”) Channel. Grantee shall have ninety (90) days from the date of receipt of the City’s request to implement the HD PEG Channel.

- (c) The HD PEG Channel provided under this section will replace one (1) PEG Channel described in Section 8.1(a) of this Franchise and will not be deemed as a requirement to carry an additional PEG Channel. The City shall only be responsible for the production costs associated with the provision of an HD Channel, any and all costs associated with any modification of the PEG Channels or signals, after the PEG Channels/signals leave the City’s currently designated playback facility shall be provided free of charge by Grantee. However, the Grantee shall have the right to offset from the PEG Fee its reasonable actual costs for capital equipment which Grantee is required to purchase to facilitate the distribution of the PEG Channels Upstream to Grantee’s headend.

- (d) The City acknowledges that receipt of an HD format Channel may require Subscribers to buy or lease special equipment or pay additional HD charges applicable to all HD services provided by Grantee. A Subscriber to the Basic Cable

Service Tier only who has Grantee's HD capable set-top box will be able to receive the HD PEG Channel on that outlet without any additional cost.

- (e) At such time as the Grantee provides ninety percent (90%) or more of its programming on the Cable System in an HD format, the City and Grantee shall establish mutually acceptable terms and conditions for providing one (1) additional PEG Channel in only HD format and as such the City will no longer provide that PEG Channel in SD format. The City shall only be responsible for the production costs associated with the provisions of an HD Channel, any and all costs associated with any modification of the PEG Channels or signals, after the PEG Channels/signals leave the City's currently designated playback facility shall be provided free of charge by Grantee. However, the Grantee shall have the right to offset from the PEG Fee its reasonable actual costs for capital equipment which Grantee is required to purchase to facilitate the distribution of the PEG Channels Upstream to Grantee's headend.
- (f) **Charges for Use.** Channel time and playback of prerecorded programming on the PEG Access Channel(s) must be provided without charge to the City and the public.
- (g) **Access Rules.** City, or its designee, may implement rules for use of any PEG Access Channel(s).
- (h) **Access Support.**
 - (1) Upon commencement of Cable Service by Grantee to its first Subscriber in the City and through the end of the term of this Franchise, Grantee shall pay to the City, on a quarterly basis, in support of PEG operations the full amount of revenues generated by one point twenty-five percent (1.25%) of Grantee's annual Gross Revenues (hereinafter "PEG Fee"). This fee may be separately itemized as a PEG Fee and passed through to Subscribers independent from rates regulated pursuant to FCC regulations. Such payment shall be separate from and in addition to the Franchise Fee.
 - (2) Except as expressly provided in this Franchise, the Grantee shall not make any changes in PEG access support. Grantee shall notify City of any changes in the transmission, reception and carriage of PEG Channels, and equipment associated therewith, within ninety (90) days of the change.
 - (3) The parties agree that any costs to the Grantee associated with the provision of support for PEG pursuant to this Franchise, do not constitute and are not part of a Franchise Fee.
 - (4) Grantee agrees that if the City imposes a different PEG Fee (higher or lower) on any other franchised cable operator in the City, Grantee shall match such PEG Fee upon ninety (90) days advanced written notice from the City. The purpose of this provision is to ensure that all franchised cable operators in the City remit the same PEG Fee to the City in accordance with Applicable Law.

ARTICLE 9. OPEN

[This Article has been intentionally left open]

ARTICLE 10. ADMINISTRATION AND REGULATION

- 10.1) Authority.** The City shall be vested with the power and right to reasonably regulate the exercise of the privileges permitted by this Franchise in the public interest, or to delegate that power and right, or any part thereof, to the extent permitted under Applicable Law, in its sole discretion. Nothing in this Franchise shall limit or expand the City's right of eminent domain under State law.
- 10.2) Reserved Authority.** The City reserves all regulatory authority arising from the Cable Act and any other relevant provisions of Applicable Law.
- 10.3) Regulations Promulgated by City Council.**
- (a) In addition to the powers held by the City under the Minnesota Constitution, the City Charter and Applicable Law, the City Council is hereby authorized to promulgate by ordinance, in the exercise of its lawful powers, such additional regulations and requirements as it shall find necessary to effectuate fully and regulate the construction and operation of a Cable System pursuant to this Franchise.
 - (b) The Grantee may propose additional regulations by application to the City Council, but the City Council shall not adopt any such proposal until it expressly determines that such proposal is in the public interest and is consistent with the terms and conditions of this Franchise. Notwithstanding anything to the contrary, the City Council shall be under no obligation to adopt any proposal offered by the Grantee.
- 10.4) Rates and Charges.** All of Grantee's rates and charges related to or regarding Cable Services shall be subject to regulation by the City to the full extent authorized by Applicable Laws.
- 10.5) Rate Discrimination.** All of Grantee's rates and charges, excluding special/limited time promotional offers, shall be published (in the form of a publicly available rate card) and be non-discriminatory as to all Persons and organizations of similar classes, under similar circumstances and conditions. Grantee shall apply its rates in accordance with governing law, with identical rates and charges for all Subscribers receiving identical Cable Services, without regard to race, color, ethnic or national origin, religion, age, sex, sexual orientation, marital, military or economic status, or physical or mental disability or geographic location within the City. Grantee shall offer the same Cable Services to all Residential Subscribers at identical rates. Grantee shall permit Subscribers to make any lawful in-residence connections the Subscriber chooses without additional charge or penalizing the Subscriber therefore. However, if any in-home connection requires Service from Grantee due to signal quality, signal leakage or other factors, caused by improper installation of such in-home wiring or faulty materials of such in-home wiring, the Subscriber may be charged

reasonable service charges by Grantee that comply with FCC rules and any rate orders issued by the City. Nothing herein shall be construed to prohibit:

- (a) The temporary reduction or waiving of rates or charges in conjunction with valid promotional campaigns; or
- (b) The offering of reasonable discounts to senior citizens or economically disadvantaged citizens; or
- (c) The offering of rate discounts for Cable Service; or
- (d) The Grantee from establishing different and nondiscriminatory rates and charges and classes of service for Commercial Subscribers, to the extent allowed by federal law and regulations.

10.6) Time Limits Strictly Construed. Whenever this Franchise sets forth a time for any act to be performed by Grantee, such time shall be deemed to be of the essence, and any failure of Grantee to perform within the allotted time may be considered a material breach of this Franchise, and sufficient grounds for the City to invoke any relevant remedy.

10.7) Periodic Evaluation.

- (a) **Notice.** The City may require evaluation sessions once every two (2) years during the term of this Franchise, upon fifteen (15) days written notice to the Grantee.
- (b) **Topics.** 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, PEG facilities and support, municipal uses of cable, Subscriber rates, customer Complaints, amendments to this Franchise, judicial rulings, FCC rulings, line extension policies and any other topics the City deems relevant.
- (c) **Good Faith Effort.** As a result of a periodic review or evaluation session, upon notification from City, Grantee shall meet with City and undertake good faith efforts to reach agreement on changes and modifications to the terms and conditions of this Franchise which are both economically and technically feasible.

10.8) Sale or Transfer of Franchise.

- (a) No sale or transfer of this Franchise, or change of control as defined in Minnesota Statutes Section 238.083, or the sale of a controlling interest in the Grantee's assets, a merger including the merger of a subsidiary and parent entity, consolidation or the creation of a subsidiary or Affiliate entity, shall take place until a written request has been filed with the City requesting approval of the sale, transfer and such approval has been granted or deemed granted, provided, however, that said approval shall not be required where Grantee grants a security interest in its Franchise and/or assets to secure an indebtedness. Upon notice to the City, Grantee may undertake legal changes necessary to consolidate the corporate structure

provided there is no change in the controlling interests which could materially alter the financial responsibilities for the Grantee, unless required by Minnesota Statutes Section 238.083. The prior written consent of the City shall not be required under this Section 10.8 for internal corporate reorganizations involving any entity that is controlled or under common control with Grantee.

- (b) The Grantee shall file, in addition to all documents, forms and information required to be filed by Applicable Law, the following: All contracts, agreements or other documents that constitute the proposed transaction and all exhibits, attachments or other documents referred to therein which are necessary in order to understand the terms thereof. The City shall have such time as is permitted by federal law in which to review a transfer request.
 - (c) In no event shall a sale, transfer, corporate change or assignment of ownership or control pursuant to this section be approved without the transferee becoming a signatory to this Franchise and assuming all rights and obligations.
 - (d) In the event of any proposed sale, transfer, corporate change or assignment, the City shall have the right to purchase the "System" serving the City for the fair-market value of the System as a going concern pursuant to 47 U.S.C. § 547 provided, however, that if Grantee is authorized to provide telecommunications services on the System pursuant to state or federal law or provides information services on the System, the City may not purchase any portion of the System used to provide such telecommunications or information services. The City's right to purchase shall arise upon City's receipt of a transfer request. Upon receipt of a transfer request, the City shall have ninety (90) days to exercise its rights pursuant to this section.
 - (e) No Franchise may be transferred if the City determines that Grantee is in noncompliance of the Franchise unless an acceptable compliance program has been approved by City. The approval of any transfer of ownership shall not be deemed to waive any rights of the City to subsequently enforce noncompliance issues relating to this Franchise.
 - (f) Any transfer or sale of the Franchise without the prior written consent of the City shall be considered to impair the City's assurance of due performance. The granting of approval for a transfer or sale in one instance shall not render unnecessary approval of any subsequent transfer or sale for which approval would otherwise be required.
 - (g) Any transfer of ownership prior to the completion of the Cable System as defined herein shall render this Franchise null and void.
- 10.9)** The Grantee shall pay all transfer requirements and charges incidental to the enforcement of the Franchise, including all the reasonable legal, administrative, and consulting costs and fees associated with the City's review of any request to transfer. Nothing herein shall prevent Grantee from negotiating partial or complete payment of such costs and fees by the transferee. Grantee may not itemize any such reimbursement on Subscriber bills but

may recover such expenses in its Subscriber rates. Grantee reserves its rights to challenge any such payments herein as falling within the definition of Franchise Fee.

10.10) Compliance with Federal, State and Local Laws.

- (a) If any federal or State law or regulation shall require or permit City or Grantee to perform any service or act or shall prohibit City or Grantee from performing any service or act which may be in conflict with the terms of this Franchise, then as soon as possible following knowledge thereof, either party shall notify the other of the point in conflict believed to exist between such law or regulation. Grantee and City shall conform to State laws and rules regarding cable communications not later than one (1) year after they become effective, unless otherwise stated, and to conform to federal laws and regulations regarding cable as they become effective.
- (b) In the event that Applicable Laws preempt a provision or limit the enforceability of a provision of this Franchise, the provision shall be read to be preempted to the extent and for the time, but only to the extent and for the time, required or necessitated by law. In the event such federal or State law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the City.
- (c) If any term, condition or provision of this Franchise or the application thereof to any Person or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition or provision to Persons or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected, thereby, and this Franchise and all the terms, provisions and conditions hereof shall, in all other respects, continue to be effective and complied with provided the loss of the invalid or unenforceable clause does not substantially alter the agreement between the parties. In the event such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision which had been held invalid or modified is no longer in conflict with the law, rules and regulations then in effect, said provision shall thereupon return to full force and effect and shall thereafter be binding on Grantee and City without further action by the City.
- (d) The Grantee shall, at all times during the term of this Franchise, including all extensions and renewals thereof, comply with Applicable Laws and regulations.

10.11) Conflict of Laws. In the event of any conflict between this Franchise and any lawfully applicable City ordinance or regulation that addresses usage of the Rights-of-Way, the conflicting terms in this Franchise shall be superseded by such City ordinance or regulation.

- (a) In the event any lawfully applicable City ordinance or regulation which addresses usage of the Rights-of-Way adds to, modifies, amends or otherwise differently

addresses issues addressed in this Franchise, the Grantee shall comply with such ordinance or regulation of general applicability, regardless of which requirement was first adopted.

- (b) In the event the Grantee cannot determine how to comply with any Right-of-Way requirement of the City, whether pursuant to this Franchise or other requirement, the Grantee shall immediately provide written notice of such question, including the Grantee's proposed interpretation, to the City. The City shall provide a written response within ten (10) business days of receipt indicating how the requirements cited by the Grantee apply. The Grantee may proceed in accordance with its proposed interpretation in the event a written response is not received within thirteen (13) business days of mailing or delivering such written question.

ARTICLE 11. GENERAL FINANCIAL AND INSURANCE PROVISIONS

11.1) Performance Bond.

- (a) At the time this Franchise becomes effective Grantee shall provide the City with a performance bond in the sum of Fifty Thousand Dollars (\$50,000.00). The performance bond shall insure the faithful performance by the Grantee of all the provisions of this Franchise, and compliance with all orders, permits and directions of the City and the payment by Grantee of any claim, penalties, damages, liens and taxes due the City related thereto or which arise by reason of the construction, operation or maintenance of the Cable System. Any failure by Grantee to provide the performance bond as required herein shall constitute a breach of this Franchise. Any interest on this deposit shall be paid to the Grantee. At such time as a majority of Grantee's construction is complete, provided Grantee is not in default under this Franchise, the amount of the performance bond shall be reduced to Ten Thousand Dollars (\$10,000) for the remainder of the Franchise term.
- (b) For a substantial violation of any material provision of this Franchise ("violation"), liquidated damages in the amount of Two Hundred Fifty and No/100 Dollars (\$250) per day, with a maximum of Fifty Thousand and No/100 Dollars (\$10,000.00) that the violation continues may be awarded to City.
- (c) The liquidated damages described in the preceding section may at the City's option, either be (i) awarded by a court of competent jurisdiction, (ii) awarded by an independent arbitrator appointed by the Chief Judge of Rice County District Court, to whose appointment, assessment and award Grantee hereby consents; (iii) or may be assessed in accordance with the following procedures:
- (d) A notice of intent to assess liquidated damages shall be served on Grantee by the City containing such facts and information as may be necessary to apprise Grantee of the liquidated damages being sought and the factual reasons therefore.
- (e) Grantee may pay such proposed liquidated damages in full, cure the violation within forty-five (45) days, or if it desires to contest the violation, the Grantee shall have forty-five (45) days following the receipt of the notice to file an answer.

- (f) City shall schedule a public hearing on the notice within forty-five (45) days after the date upon which Grantee's answer to the notice was to have been filed with City. At the hearing, City may request information from Grantee and may undertake any actions deemed necessary to render a decision on the notice and/or the Grantee's answer thereto. Grantee shall have the right to present witnesses and evidence in its defense and to question the evidence of City.
- (g) Following the close of the hearing, the City shall, within thirty (30) days, render a written decision.
- (h) The action taken by City pursuant to these hearings shall, without further proceedings, become the final decision of City. In the event City determines that a violation has occurred, Grantee may appeal the decision to a court of competent jurisdiction for a judicial review. A hearing under this section prohibits the accumulation of liquidated damages only until a court of competent jurisdiction renders a final decision.
- (i) If Grantee fails to pay to City any monetary obligations due and owing to City under the terms and conditions of this Franchise on the date when the obligation is due and payable to City as provided for herein or if Grantee fails to pay to City any liquidated damages assessed against Grantee as provided for under this part (such as within three (3) days after receiving notice of the assessment of liquidated damages following a hearing by City) City may claim against the performance bond for the amount owing to City as of that date.
- (j) The City has the right to apply any one or any combination of the remedies provided for in this Franchise, including without limitation all remedies provided for in this section, and may without limitation pursue any rights, remedies or actions that it may have in law or equity. Notwithstanding the foregoing, if liquidated damages are assessed against Grantee for any violation of its obligations under this Franchise, they shall be considered the full and final resolution of the violation and shall constitute a waiver of any future claims regarding the violation.

11.2) Remedies Not Exclusive. The City has the right to apply any one (1) or any combination of the remedies provided for in this Franchise, including without limitation all remedies provided for in this section, and may without limitation pursue any rights, remedies or actions that it may have in law or equity. Notwithstanding the foregoing, if liquidated damages are assessed against Grantee for any violation of its obligations under this Franchise, they shall be considered the full and final resolution of the violation and shall constitute a waiver of any future claims regarding the violation.

- (a) Whenever the performance bond is drawn upon, Grantee may, within seven (7) days of such draw, notify City in writing that there is a dispute as to whether a violation or failure has in fact occurred. Such written notice by Grantee to City shall specify with particularity the matters disputed by Grantee. All liquidated damages shall continue to accrue from the performance bond during any appeal pursuant to this subparagraph (a).

- (1) City shall hear Grantee's dispute within sixty (60) days and render a final decision within sixty (60) days thereafter.
 - (2) Upon the determination of City that no violation has taken place, City shall refund to Grantee, without interest, all monies drawn from the performance bond by reason of the alleged violation.
- (b) If City draws upon the performance bond or any subsequent performance bond delivered pursuant hereto, in whole or in part, Grantee shall replace or replenish to its full amount the same within ten (10) days and shall deliver to City a like replacement performance bond or certification of replenishment for the full amount stated in Section 11.2 (a) as a substitution of the previous performance bond. This shall be a continuing obligation for any draws upon the performance bond.
 - (c) If any performance bond is not so replaced or replenished, City may draw on said performance bond for the whole amount thereof and use the proceeds as City determines in its sole discretion. The failure to replace or replenish any performance bond may also, at the option of the City, be deemed a default by Grantee under this Franchise. The drawing on the performance bond by City and use of the money so obtained for payment or performance of the obligations, duties and responsibilities of Grantee which are in default, shall not be a waiver or release of such default.
 - (d) The collection by City of any damages, monies or liquidated damages from the performance bond shall not affect any other right or remedy available to City, nor shall any act, or failure to act, by City pursuant to the performance bond, be deemed a waiver of any right of City pursuant to this Franchise or otherwise.

11.3) Indemnification of City.

- (a) The City and its officers, boards, committees, commissions, commissioners, elected and appointed officials, employees, volunteers and agents shall not be liable for any loss or damage to any real or personal property of any Person, or for any injury to or death of any Person arising out of or in connection with Grantee's construction, operation, maintenance, repair or removal of the System or as to any other action of Grantee with respect to this Franchise.
- (b) Nothing in this Franchise relieves a Person, from liability arising out of the failure to exercise reasonable care to avoid injuring the Grantee's facilities while performing work in the Rights-of-Way or in Public Property.
- (c) Relating to PEG programming or other City uses of the signal, the Grantee shall not be required to indemnify the City, nor is the Grantee liable, for negligence or misconduct on the part of the City or its officers, boards, committees, commissions, commissioners, elected or appointed officials, employees, volunteers or agents, including any loss or claims.

11.4) Insurance.

- (a) As a part of the indemnification provided herein, but without limiting the foregoing, Grantee shall file with City at the time of its acceptance of this Franchise, and at all times thereafter maintain in full force and effect at its sole expense, a certificate of insurance evidencing an occurrence-based comprehensive general liability insurance policy, including contractual liability coverage, in protection of the City in its capacity as such, its officers, elected officials, appointed officials, boards, commissions, commissioners, agents or employees. The policy or policies shall name as additional insured the City and in their capacity as such, the City's officials, boards, commissions, agents, or employees.
- (b) The policies of insurance shall be in the sum of not less than Three Million and No/100 Dollars (\$3,000,000.00) for personal injury and property damage or One Million and No/100 Dollars (\$1,000,000.00) together with a minimum of Two Million and No/100 Dollars (\$2,000,000.00) excess liability coverage.
- (c) The policy or policies of insurance shall be maintained by Grantee in full force and effect during the entire term of the Franchise. Each policy of insurance shall contain a statement on its face that the insurer will not cancel the policy or fail to renew the policy, whether for nonpayment of premium, or otherwise, and whether at the request of Grantee or for other reasons, except after sixty (60) days advance written notice have been provided to the City.
- (d) Grantee shall obtain and maintain Workers' Compensation Insurance for all Grantee's employees, and in case any work is sublet, Grantee shall require any subcontractor similarly to provide Workers' Compensation Insurance for all of their employees, all in compliance with state laws, and to fully indemnify the City from and against any and all workers' compensation claims arising out of occurrences on the work. Grantee hereby indemnifies the City for any and all costs, expenses (including attorneys' fees and disbursements of counsel), damages and liabilities incurred by the City as a result of any failure of either Grantee or any subcontractor to take out and maintain such insurance. Grantee shall provide the City with a certificate of insurance indicating Workers' Compensation coverage on the Effective Date.

11.5) Deductibles/Certificate of Insurance. Any deductible of the required insurance policies shall not in any way limit Grantee's liability to the City.

ARTICLE 12. FRANCHISE FEE PAYMENT AND FINANCIAL CONTROLS

12.1) Franchise Fee. As compensation for the benefits and privileges granted under this Franchise and in consideration of permission to use the City's Rights-of-Way, Grantee shall pay as a Franchise Fee to the City, or its delegatee, throughout the term of this Franchise an amount equal to five percent (5%) of Grantee's Gross Revenues. Accrual of such Franchise Fee shall commence as of the Effective Date of this Franchise.

- 12.2) Acceptance of Payment and Recomputation.** No acceptance of any payment shall be construed as an accord by the City that the amount paid is in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the City may have for further or additional sums payable or for the performance of any other obligation of Grantee.
- 12.3) Underpayments.** If a net Franchise Fee underpayment is discovered as the result of an audit, Grantee will be assessed damages and interest pursuant to Applicable Law.
- 12.4) Maximum Legal Compensation.** The parties acknowledge that, at present, Applicable Law limits the City to collection of a maximum permissible Franchise Fee of five percent (5%) of Gross Revenues. In the event that at any time during the duration of this Franchise, the City is authorized to collect an amount in excess of five percent (5%) of Gross Revenues, then this Franchise may be amended unilaterally by the City to provide that such excess amount shall be added to the Franchise Fee payments to be paid by Grantee to the City hereunder, provided that Grantee has received at least ninety (90) days prior written notice from the City of such amendment.
- 12.5) Quarterly Payments.** Any payments due under this provision shall be payable quarterly. The payment shall be made within thirty (30) days of the end of each of Grantee's fiscal quarters together with a report prepared by a representative of the Grantee showing the basis for the computation of the Franchise Fees paid during that time period in a form and substance substantially equivalent to Exhibit B, attached hereto. The City shall have the right to require further supporting information for each Franchise Fee payment.
- 12.6) Penalty.** In the event any Franchise Fee payment or recomputation amount is not made on or before the required date, the Grantee shall pay interest on the amount due of one and one-half percent (1-1/2%) per month, eighteen percent (18%) per year, or such other maximum rate allowed by law.
- 12.7) Deduction Prohibited.** Nothing in this Franchise shall be construed to limit any authority of the City to impose any tax, fee or assessment of general applicability. The Franchise Fee payments required by this Franchise shall be in addition to any and all taxes or fees of general applicability. The Grantee shall not have or make any claim for any deduction or other credit of all or any part of the amount of said Franchise Fee payments from or against any of said taxes or fees of general applicability, except as expressly permitted by law. The Grantee shall not apply nor seek to apply all or any part of the amount of said Franchise Fee payments as a deduction or other credit from or against any of said taxes or fees of general applicability, except as expressly permitted by law. Nor shall the Grantee apply or seek to apply all or any part of the amount of any of said taxes or fees of general applicability as a deduction or other credit from or against any of its Franchise Fee obligations, except as expressly permitted by law.
- 12.8) Tax Liability.** The Franchise Fees shall be in addition to any and all taxes or other levies or assessments which are now or hereafter required to be paid by businesses in general by any law of the City, the State or the United States including, without limitation, sales, use and other taxes, business license fees or other payments. Payment of the Franchise Fees

under this Franchise shall not exempt Grantee from the payment of any other license fee, permit fee, tax or charge on the business, occupation, property or income of Grantee that may be lawfully imposed by the City. Any other license fees, taxes or charges shall be of general applicability in nature and shall not be levied against Grantee solely because of its status as a cable operator, or against Subscribers, solely because of their status as such.

- 12.9) Payment on Termination.** If this Franchise terminates for any reason, the Grantee shall file with the City within ninety (90) calendar days of the date of the termination, a financial statement, certified by an independent certified public accountant, showing the Gross Revenues received by the Grantee since the end of the previous fiscal year. The City reserves the right to satisfy any remaining financial obligations of the Grantee to the City by utilizing the funds available in the letter of credit or other security provided by the Grantee.

ARTICLE 13. PROTECTION OF INDIVIDUAL RIGHTS

- 13.1) Discriminatory Practices Prohibited.** Grantee shall not deny service, deny access or otherwise discriminate against Subscribers or general citizens on the basis of race, color, religion, national origin, sex, age, status as to public assistance, affectional preference or disability. Grantee shall comply at all times with all other Applicable Laws.
- 13.2) Subscriber Privacy.** Grantee shall comply with all Applicable Laws related to the protection of a Subscriber's privacy including, but not limited to, 47 U.S.C. § 551

ARTICLE 14. UNAUTHORIZED CONNECTIONS AND MODIFICATIONS

- 14.1) Unauthorized Connections or Modifications Prohibited.** It shall be unlawful for any firm, Person, group, Grantee, corporation or governmental body or agency, without the express consent of the Grantee, to make or possess, or assist anybody in making or possessing, any unauthorized connection, extension or division, whether physically, acoustically, inductively, electronically or otherwise, with or to any segment of the System or to receive services of the System without Grantee's authorization.
- 14.2) Removal or Destruction Prohibited.** It shall be unlawful for any firm, Person, group, Grantee or corporation to willfully interfere, tamper with, remove, obstruct, or damage, or assist thereof, any part or segment of the System for any purpose whatsoever, except for any rights the City may have pursuant to this Franchise or its police powers.
- 14.3) Penalty.** Any firm, Person, group, Grantee or corporation found guilty of violating this section may be fined not less than Twenty Dollars (\$20.00) and the costs of the action not more than Five Hundred Dollars (\$500.00) and the costs of the action for each and every subsequent offense. Each continuing day of the violation shall be considered a separate occurrence.

ARTICLE 15. DEFAULT; REMEDIES

- 15.1) Event of Default.** In the event of default by Grantee under this Franchise, the City Cable Administrator shall notify Grantee in writing, stating with reasonable specificity the nature

of the alleged default. Grantee shall have thirty (30) days to either cure the default or to provide satisfactory written proof that a cure cannot be completed within the thirty (30) day period, but that the cure is being actively and expeditiously pursued and will be completed within a time certain. If the default is not fully cured within that thirty (30) day period following written demand; or if there is not written proof satisfactory to the City Cable Administrator that corrective action has been taken or is being actively and expeditiously pursued so that the cure will be completed by a time satisfactory to the City Cable Administrator; or if the City Cable Administrator provides the Grantee additional time to cure and the Grantee fails to cure within a time satisfactory to the City Cable Administrator; the City Cable Administrator may:

- (a) Recommend the revocation of this Franchise pursuant to the procedures herein;
- (b) Assess liquidated damages against Grantee as provided for herein; or
- (c) Recommend any other legal or equitable remedy available under this Franchise or any Applicable Law.

15.2) Procedure for Revocation.

- (a) **Public Hearing.** In the event revocation of this Franchise is recommended, the Grantee shall be provided the right to a public hearing affording due process before the City Council prior to the effective date of revocation, which public hearing shall follow the thirty (30) day notice provided herein. Such notice shall indicate with reasonable specificity the grounds for revocation that are believed to exist so that the Grantee may have a reasonable opportunity to cure or otherwise address the same. The City Council shall hear and consider the issue and shall hear any person interested therein, and shall determine, in its discretion, whether or not any violation by the Grantee has occurred. If the Council determines that the violation by the Grantee was within its control, and that the Grantee has failed to completely cure the violation, the council may, by resolution, declare that the Grantee's Franchise be revoked. Nothing herein prevents the City from providing the Grantee with additional opportunities to cure. The City council may not give the Grantee any opportunity to comply where fraud and/or misrepresentation has been alleged and proved to the council's satisfaction. The City shall provide the Grantee with written notice of its decision together with written findings of fact supplementing said decision.
- (b) The administrative hearing shall be conducted so as to protect the full due process rights of the parties and provide for, at a minimum, the right to have counsel, the right to call and cross-examine witnesses, and the right to a full transcript of the proceedings.
- (c) After the close of the hearing, the City or the designated hearing officer shall issue a written decision based on the record of the proceedings, stating with specificity the findings and reasons supporting the decision.

- (d) Upon revocation, a Grantee shall have a period of one hundred and twenty (120) days subsequent to the date of the formal adoption of a revocation of the Franchise by the City within which to file an appeal with a court of competent jurisdiction.
- (e) **Full Force and Effect.** During the appeal period, the Franchise shall remain in full force and effect unless the term thereof sooner expires or unless continuation of the Franchise would endanger the health, safety and welfare of any person or the public.

15.3) Revocation. The City reserves the right to revoke the Franchise, in the event that Grantee substantially violates any material provision of this Franchise.

15.4) Conditions of Sale After Revocation or Termination. The City may, to the extent permitted by 47 U.S.C. § 547, acquire ownership of the System in accordance with the following conditions:

- (a) Upon revocation of a Franchise, a fair valuation shall be an equitable value that shall not include any sum attributable to the value of the Franchise itself.
- (b) At the expiration of a Franchise and following a denial of renewal of the Franchise, a fair valuation shall be the Fair Market Value of the plant and property, exclusive of the value attributed to the Franchise itself.
- (c) In the event City shall acquire a Franchise pursuant to the provisions of this Franchise Ordinance or a franchise agreement, and commenced operation of the System, City shall reimburse the Grantee for the Fair Market Value of the System.

15.5) Remedies Nonexclusive. The rights reserved by the City herein are in addition to all other rights and remedies the City may have under this Franchise or any other law and are not intended to be exclusive, nor shall this provision be read to supersede or limit the applicability of any penalty provisions under Applicable Law.

15.6) City Options in the Event of Expiration, Termination or Revocation.

- (a) If this Franchise expires without renewal or is otherwise lawfully terminated or revoked, the City may, subject to Applicable Law:
 - (1) Allow Grantee to maintain and operate its Cable System on a month-to-month basis or short-term extension of this Franchise for not less than six (6) months, unless a sale of the Cable System can be closed sooner or Grantee demonstrates to the City's satisfaction that it needs additional time to complete the sale;
 - (2) Order removal of the System in accordance with City Code and Minn. Stat. § 7819; or
 - (3) Purchase Grantee's Cable System in accordance with the procedures set forth herein.

- (b) In the event that a sale has not been completed as set forth above, the City shall have the right to require the Grantee, at the Grantee's sole expense: (i) to remove all portions of the System from all Rights-of-Way within the City; and (ii) to restore affected sites to their original condition. Should the Grantee fail, refuse or neglect to comply with the City's directive, all portions of the System, or any part thereof, may at the option of the City become the sole property of the City, at no expense to the City; or the City may cause the work to be done and Grantee shall reimburse the City for the costs incurred within thirty (30) days after receipt of an itemized list of the costs, or the City may recover the costs through the letter of credit provided by Grantee. The City shall not be liable to the Grantee for damages resulting from such removal, alteration or relocation. The indemnification, insurance provisions and the letter of credit shall remain in full force and effect during the period of removal, and Grantee shall not be entitled to, and agrees not to request, compensation of any sort therefor.

15.7) Abandonment. The Cable System shall be declared abandoned if:

- (a) The Grantee fails to provide Cable Service in accordance with this Franchise over a substantial portion of the Franchise Area for four (4) consecutive days, unless the City authorizes a longer interruption of Service, or
- (b) The Grantee, for any period, willfully and without cause refuses to provide Cable Service in accordance with this Franchise.

15.8) Effect of Abandonment. If the Grantee abandons its Cable System during the Franchise term, or fails to operate its Cable System in accordance with its duty to provide continuous Service, the City, at its option, may to the extent permitted by Applicable Law operate the Cable System; designate another entity to operate the Cable System temporarily until the Grantee restores Service under conditions acceptable to the City, or until the Franchise is revoked and a new franchisee is selected by the City; or obtain an injunction requiring the Grantee to continue operations. If the City is required to operate or designate another entity to operate the Cable System, the Grantee shall reimburse the City or its designee for all reasonable costs, expenses and damages incurred, or such expenses may be drawn from the letter of credit.

15.9) Removal After Abandonment, Termination or Forfeiture.

- (a) In the event of revocation of the Franchise or abandonment or forfeiture of the System, the City shall have the right to require the Grantee to remove all or any portion of the System from all Rights-of-Way and Public Property within the City.
- (b) If the Grantee has failed to commence removal of the System, or such part thereof as was designated by the City, within thirty (30) days after written notice of the City's demand for removal is given, or if the Grantee has failed to complete such removal within twelve (12) months after written notice of the City's demand for removal is given, the City shall have the right to apply funds secured by the letter of credit toward removal and/or declare all right, title and interest to the System to

be in the City with all rights of ownership including, but not limited to, the right to operate the System or transfer the System to another Person for operation by it.

15.10) Discontinuing Use of Cable System Facilities. Whenever Grantee intends to discontinue using any facility within the Rights-of-Way, Grantee shall submit for the City's approval a complete description of the facility and the date on which Grantee intends to discontinue using the facility. Grantee may remove the facility or request that the City permit it to remain in place. Notwithstanding Grantee's request that any such facility remain in place, the City may require Grantee to remove the facility from the Right-of-Way or modify the facility to protect the public health, welfare, safety, and convenience, or otherwise serve the public interest. The City may require Grantee to perform a combination of modification and removal of the facility. Grantee shall complete such removal or modification in accordance with a schedule set by the City. Until such time as Grantee removes or modifies the facility as directed by the City, or until the rights to and responsibility for the facility are accepted by another Person having authority to construct and maintain such facility, Grantee shall be responsible for all necessary repairs and relocations of the facility, as well as maintenance of the Right-of-Way, in the same manner and degree as if the facility were in active use, and Grantee shall retain all liability for such facility.

ARTICLE 16. REPORTS AND RECORDS

16.1) Open Records. Grantee shall manage its operations in accordance with a policy of keeping its documents and records open and accessible to the City. Subject to the privacy provisions of the Cable Act, throughout the term of this Franchise, the City, including the City's Auditor or his/her authorized representative, shall have access to, and the right to inspect, any books and records of Grantee, and its parent corporations and Affiliates which are reasonably related to the administration or enforcement of the terms of this Franchise ("Records"). Grantee shall not deny the City access to any of Grantee's Records on the basis that Grantee's records are privileged, confidential or trade secret data, or under the control of any parent corporation, Affiliate or a third party. The City may, in writing, request copies of any such records or books and Grantee shall provide such copies within thirty (30) days of the transmittal of such request. Such notice shall specifically reference those sections of the Franchise that are under review so that the Grantee may organize the necessary Records for easy access by the City. Grantee shall make available for review such Records at Grantee's sole cost and expense, free of charge to the City. Records shall be retained by the Grantee for a period of six (6) years, pursuant to Minnesota Statutes, Section 541.05. Grantee shall provide all Records requested by the City or City's agent in the following manner: 1) at a conference room in City Hall; or 2) at Grantee's office located in the City or no further than five (5) miles from the City limits; or 3) via mail or electronic communication acceptable to the City and Grantee.

16.2) Confidentiality.

- (a) Subject to Applicable Law, Grantee may choose to provide any confidential or proprietary 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 Records at a conference room in City Hall or at Grantee's office located in the City,

without City obtaining its own copies of such Records. Grantee may also choose to provide any confidential or proprietary Records pursuant to a mutually acceptable non-disclosure agreement with a City designated agent. The intent of the parties is to work cooperatively to ensure that those Records reasonably necessary for City's monitoring and enforcement of Franchise obligations are provided to City. To the extent that Grantee does provide Records directly to the City, City agrees to keep said Records confidential and proprietary to the fullest extent permitted by Applicable Law. Grantee shall be responsible for clearly and conspicuously identifying the Records confidential or proprietary. Grantee acknowledges that the Minnesota Government Data Practices Act ("MGDPA") places limitations on the ability of the City to protect certain information unless such information meets the statutory requirements set forth in the MGDPA.

- (b) If the City believes it must release any such confidential or proprietary Records in the course of enforcing this Franchise, or for any other reason including compliance with the MGDPA, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. The City agrees that, to the extent permitted by the MGDPA and Applicable Law, it shall deny access to any of Grantee's Records marked confidential, as set forth above, to any Person and that it shall furnish only that portion of the Grantee's Records required under the MGDPA and Applicable Law.

16.3) Records Required.

- (a) All reports and records required under this Franchise shall be furnished at the sole expense of Grantee.
- (b) Upon request of the City, Grantee shall provide the following information to the City:
 - (1) A written or computer-stored record of all truck rolls undertaken by the Grantee for the preceding two (2) years;
 - (2) A copy of all FCC filings on behalf of Grantee, its parent corporations or Affiliates which relate to the operation of the Cable System in the City;
 - (3) A complaint record for Cable Service which shall contain a semi-annual (January 1 through June 30 and July 1 through December 31) breakdown indicating the total number of escalated complaints received for the preceding reporting period, and shall indicate the classifications of all other complaints in general categories such as construction, billing, customer relations/service and miscellaneous. Escalated complaints shall mean those complaints that are received by the City, or received in writing by Grantee's area management;
 - (4) A complete list of Cable Services, applicable rates and charges, and Channel line- ups;

- (5) An annual statement, reflecting the total amount of Gross Revenues and all payments and computations of the Franchise Fees and PEG Fees for the previous calendar year;
 - (6) Information which shall describe in detail Grantee's compliance with Article 7 - Customer Service of this Franchise; and
 - (7) A complete schedule of current rates and charges for any and all Leased Access Channels, or portions of such Channels, provided by Grantee. The schedule shall include a description of the price, terms and conditions established by Grantee for Leased Access Channels.
- (c) Upon request of the City and only to the extent mutually upon by Grantee in no event later than thirty (30) days from the date of receipt of such request, Grantee shall, upon mutually acceptable terms and conditions, prepare and furnish to the City such reports with respect to its operation, affairs, transactions or property, as may be reasonably necessary to ensure compliance with the terms of this Franchise. Neither City nor Grantee shall unreasonably demand or withhold information requested pursuant with the terms of this Franchise. The City agrees to request access to only those books and records, in exercising its rights under this section, which it deems reasonably necessary for the enforcement and administration of this Franchise.
- 16.4) Gross Revenue Report.** Each Franchise Fee payment shall be accompanied by a written report to the City, verified by an authorized representative of Grantee, containing an accurate statement in summarized form, as well as in detail, of Grantee's Gross Revenues and the computation of the payment amount, in a format similar to the worksheet provided at Exhibit B, attached hereto. Such reports shall detail all Gross Revenues of the Cable System and shall be drafted in accordance with GAAP.
- 16.5) Miscellaneous Reports.** The Grantee shall prepare and furnish to the City, at the times and in the form prescribed, such other reports with respect to Grantee's operations pursuant to this Franchise as the City may reasonably require.
- 16.6) Maps and Permanent Records.** If required by the City, the Grantee shall furnish to and file with the City the maps, and permanent records of the location and character of all facilities constructed, including underground facilities and Grantee shall file with the City updates of such maps, and permanent records annually if changes have been made in the System.
- 16.7) Copies of Federal and State Reports.** Grantee shall submit, upon written request, to the City copies of all pleadings, applications, notifications, communications and documents of any kind, submitted by Grantee or its parent corporations, to any federal, State or Local courts, regulatory agencies and other government bodies if such documents directly relate to the operations of Grantee's Cable System within the City.
- 16.8) Financial Records.** Grantee agrees to meet with a representative of the City, upon request to review Grantee's methodology of record-keeping, financial reporting, the computing of

Franchise Fee obligations and other procedures, the understanding of which the City deems necessary for reviewing reports and records.

- 16.9) Audit.** All amounts paid shall be subject to audit or review and recomputation by City and acceptance of any payment shall not be construed as an accord that the amount paid is in fact the correct amount. City shall not audit any period of time more than once. The Grantee shall be responsible for providing the City all records necessary to confirm the accurate payment of Franchise Fees. The Grantee shall maintain such records for five (5) years, unless in the Grantee's ordinary course of business specific records are retained for a shorter period, but in no event less than three (3) years. If an audit or review discloses an overpayment or underpayment of Franchise Fees, the City shall notify the Grantee of such overpayment or underpayment. The City's audit or review expenses shall be borne by the City unless the audit or review determines that the payment to the City should be increased by more than five percent (5%) in the audited period, in which case the costs of the audit or review shall be borne by the Grantee as a cost incidental to the enforcement of the Franchise. Any additional amounts due to the City as a result of the audit or review shall be paid to the City within thirty (30) days following written notice to the Grantee by the City of the underpayment, which notice shall include a copy of the audit or review report. If the recomputation results in additional revenue to be paid to the City, such amount shall be subject to a ten percent (10%) annual interest charge. If the audit or review determines that there has been an overpayment by the Grantee, the Grantee may credit any overpayment against its next quarterly payment.

ARTICLE 17. MISCELLANEOUS PROVISIONS

- 17.1) Franchise Renewal.** Any renewal of this Franchise shall be performed in accordance with Applicable Laws and regulations.
- 17.2) Work of Contractors and Subcontractors.** Grantee's contractors and subcontractors shall be licensed and bonded in accordance with the City's ordinances, regulations and requirements. Work by contractors and subcontractors are subject to the same restrictions, limitations and conditions as if the work were performed by Grantee itself. Grantee shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf as if the work were performed by it, and shall ensure that all such work is performed in compliance with this Franchise and Applicable Law, and shall be jointly and severally liable for all damages and correcting all damage caused by them. It is Grantee's responsibility to ensure that contractors, subcontractors or other Persons performing work on Grantee's behalf are familiar with the requirements of this Franchise and Applicable Laws governing the work performed by them. All applicable obligations of this Franchise shall apply to any subcontractor or others performing any work or services pursuant to the provisions of this Franchise; however, in no event shall any such subcontractor or other performing work obtain any rights to maintain and operate a System or provide Cable Service. The Grantee shall provide notice to the City of the name(s) and address(es) of any entity, other than Grantee, which performs substantial services pursuant to this Franchise.

- 17.3) Amendment of Franchise Ordinance.** The Grantee and the City may agree, from time to time, to amend this Franchise. Such written amendments may be made subsequent to a review session pursuant to this Franchise or at any other time if the City and the Grantee agree that such an amendment will be in the public interest or if such an amendment is required due to changes in Applicable Laws. Provided, however, nothing herein shall restrict the City's exercise of its police powers or the City's authority to unilaterally amend Franchise provisions to the extent permitted by law.
- 17.4) Non-Waiver.** Grantee shall not be relieved of its obligations to comply with any of the provisions of this Franchise by reason of any failure or delay of City to enforce prompt compliance. City may only waive its rights hereunder by expressly so stating in writing. Any such written waiver by City of a breach or violation of any provision of this Franchise shall not operate as or be construed to be a waiver of any subsequent breach or violation.
- 17.5) Rights Cumulative.** All rights and remedies given to City by this Franchise or retained by City herein shall be in addition to and cumulative with any and all other rights and remedies, existing or implied, now or hereafter available to City, at law or in equity, and such rights and remedies shall not be exclusive, but each and every right and remedy specifically given by this Franchise or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by City and the exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy.
- 17.6) Grantee Acknowledgment of Validity of Franchise.** The Grantee acknowledges that it has had an opportunity to review the terms and conditions of this Franchise and that under current law Grantee believes that said terms and conditions are not unreasonable, illegal or arbitrary, and that Grantee believes City has the power to make the terms and conditions contained in this Franchise.
- 17.7) Force Majeure.** The Grantee shall not be deemed in default of provisions of this Franchise or the City Code where performance was rendered impossible by war or riots, pandemics, disease, labor strikes or civil disturbances, floods or other causes beyond the Grantee's control, and the Franchise shall not be revoked or the Grantee penalized for such noncompliance, provided that the Grantee, when possible, takes immediate and diligent steps to bring itself back into compliance and to comply as soon as possible, under the circumstances, with the Franchise without unduly endangering the health, safety and integrity of the Grantee's employees or property, or the health, safety and integrity of the public, the Rights-of-Way, Public Property or private property.
- 17.8) Governing Law.** This Franchise shall be governed in all respects by the laws of the State of Minnesota.
- 17.9) Captions and References.**
- (a) The captions and headings of sections throughout this Franchise are intended solely to facilitate reading and reference to the sections and provisions of this Franchise. Such captions shall not affect the meaning or interpretation of this Franchise.

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

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

17.11) Merger of Documents. This Franchise and the attachments hereto, constitute the entire Franchise agreement between the City and the Grantee, and supersede all prior oral or written franchises and understandings.

17.12) Equal Employment Opportunity and Affirmative Action.

- (a) The Grantee shall not deny Service, deny access or otherwise discriminate against Subscribers, Channel users or other persons on the basis of race, color, creed, religion, ethnic origin, age, sex, sexual or affectional orientation, familial status, marital status, status with regard to public assistance, or handicap. The Grantee shall comply with all requirements of Applicable Laws and regulations relating to nondiscrimination.
- (b) The Grantee shall comply with or exceed all Applicable Laws and regulations relating to equal employment opportunity.

ARTICLE 18. PUBLICATION; EFFECTIVE DATE; ACCEPTANCE

18.1) Publication. This Franchise shall be published in accordance with Applicable Law. The Summary of Ordinance for Publication, attached hereto as Exhibit D, shall be published at least once in the official newspaper of the City, at Grantee's sole cost, to clearly inform the public of the intent of the ordinance. The effective date of this Franchise shall be the date of acceptance by Grantee in accordance with the provisions of Section 18.2.

18.2) Acceptance.

- (a) Grantee shall accept this Franchise within thirty (30) days of its enactment by the City Council unless the time for acceptance is extended by the City. Such acceptance by the Grantee shall be deemed the grant of this Franchise for all purposes provided, however, this Franchise shall not be effective until all City ordinance adoption procedures are complied with and all applicable timelines have run for the adoption of a City ordinance. In the event acceptance does not take place or should all ordinance adoption procedures and timelines not be completed, this Franchise and any and all rights granted hereunder to the Grantee shall be null and void.
- (b) Upon acceptance of this Franchise, the Grantee and the City shall be bound by all the terms and conditions contained herein. The Grantee agrees that this Franchise is not inconsistent with Applicable Law or regulations at the time it is executed.

- (c) The City's "Notice of Intent to Consider an Application for a Franchise" ("Notice") provided, consistent with Minn. Stat. § 238.081, Subd. 8, that applicants would be required to reimburse the City for all necessary costs of processing a cable communications franchise. Grantee submitted an application fee with its application to the City. The Notice further provided that any unused portion of the application fee would be returned, and any additional fees required to process the application and franchise, beyond the application fee, would be assessed to the successful applicant. The Grantee shall therefore submit to the City at the time of acceptance of this Franchise, a check made payable to the City of Northfield, Minnesota for all additional fees and costs incurred by the City. Within thirty (30) days of City Council approval, the City shall provide Grantee with a letter specifying such additional costs following approval of this Franchise by the City Council.
- (d) 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 and insurance certificates required herein that are due but have not previously been delivered.

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

Passed and adopted this 13th day of July, 2021.

Mayor

Attest:

City Clerk

First Reading: 06/15/2021

Second Reading: 07/13/2021

Published:

VOTE: ___ POWNELL ___ GRABAU ___ PETERSON WHITE
 ___ NAKASIAN ___ NESS ___ REISTER ___ ZUCCOLOTTO

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

CMN-RUS, Inc.

Dated: _____

By: _____

Its: _____

EXHIBIT A
SERVICE TO PUBLIC AND PRIVATE BUILDINGS

City Hall
(including the departments of Administration, Human Resources, Community Development,
Finance, Motor Vehicle, Engineering)
801 Washington Street
Northfield, MN 55057

Water Department
1101 College Street
Northfield, MN 55057

Street Department
1710 Riverview Drive
Northfield, MN 55057

Wastewater Department
1450 Highway 3 North
Northfield, MN 55057

Arena
1280 Bollenbacher Drive
Northfield, MN 55057

Northfield Area Fire & Rescue
301 Fifth Street West
Northfield, MN 55057

Police Department
1615 Riverview Drive
Northfield, MN 55057

Northfield Community Resource Center
1651 Jefferson Parkway
Northfield, MN 55057

Municipal Liquor Store - Signal not for public use
116 Fifth Street West
Northfield, MN 55057

Northfield Public Library
210 Washington Street
Northfield, MN 55057

EXHIBIT B
FRANCHISE FEE PAYMENT WORKSHEET

TRADE SECRET – CONFIDENTIAL

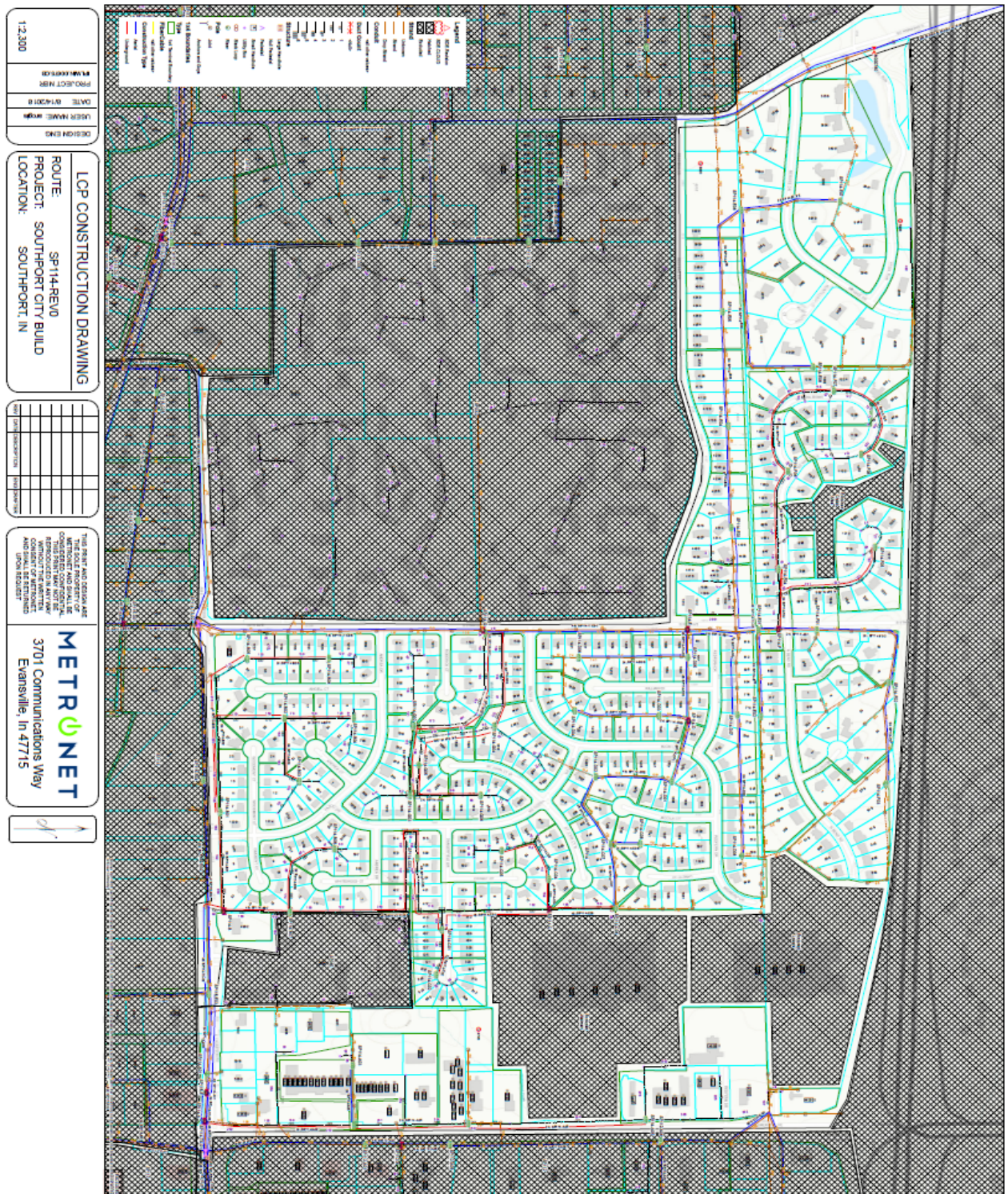
	Month/Year	Month/Year	Month/Year	Total
Cable Service Revenue				
Installation Charge				
Franchise Fee Revenue				
Advertising Revenue				
Home Shopping Revenue				
Other Revenue				
Equipment rental				
REVENUE				
Fee Calculated				

Fee Factor: 5%

PEG Fee: 1.25%

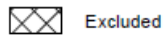
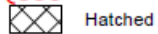
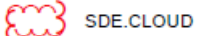
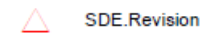
EXHIBIT C

Sample Construction Drawings

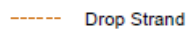
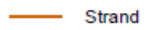
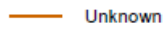


Example Front Easement

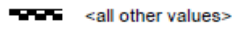
Legend



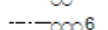
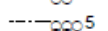
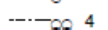
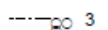
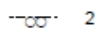
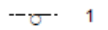
Strand



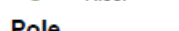
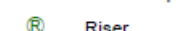
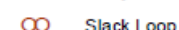
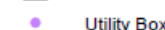
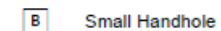
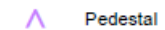
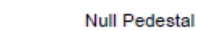
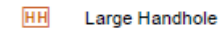
Conduit



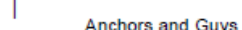
Duct Count



Structure

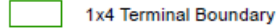


Pole

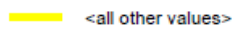


1x4 Boundaries

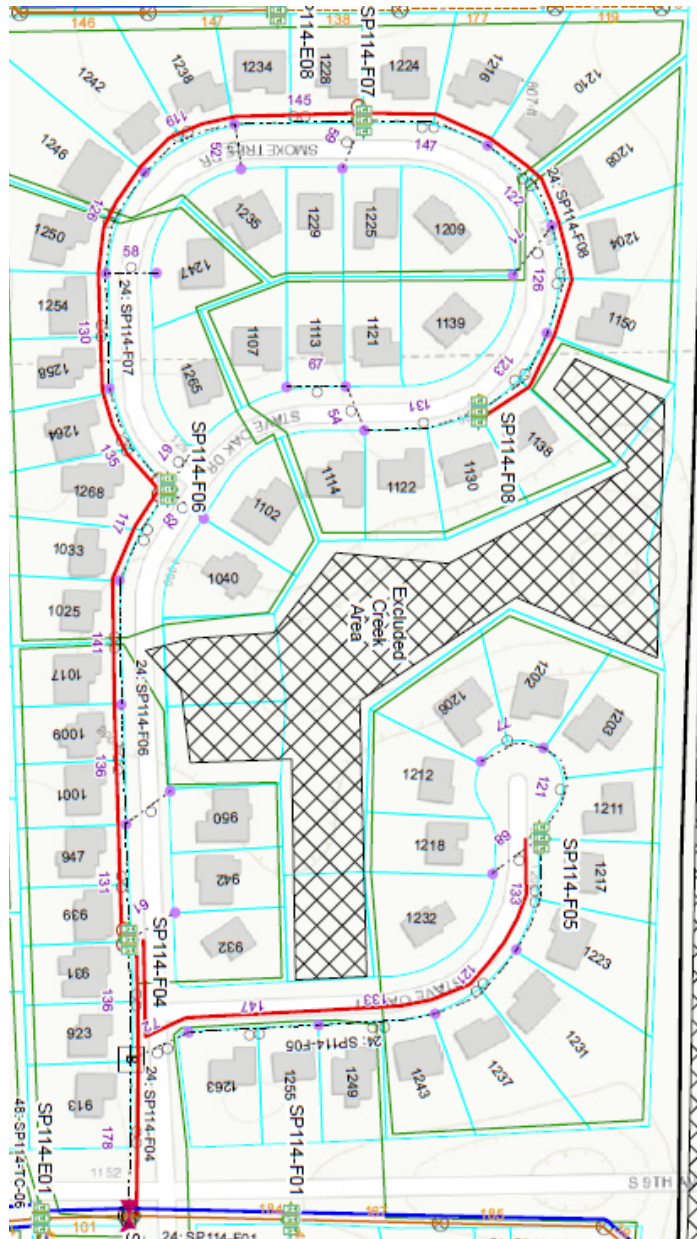
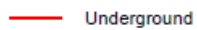
Type



FiberCable







Construction Type



Example Aerial


Legend

-  SDE.Revision
-  SDE.CLOUD
-  Hatched
-  Excluded








Strand

-  Unknown
-  Strand
-  Drop Strand








Conduit

-  <all other values>



Duct Count

-  <Null>
-  1
-  2
-  3
-  4
-  5
-  6

Structure

-  Large Handhole
-  Null Pedestal
-  Pedestal
-  Small Handhole
-  Utility Box
-  Slack Loop
-  Riser


Pole

-  Joint
-  Anchors and Guys



1x4 Boundaries

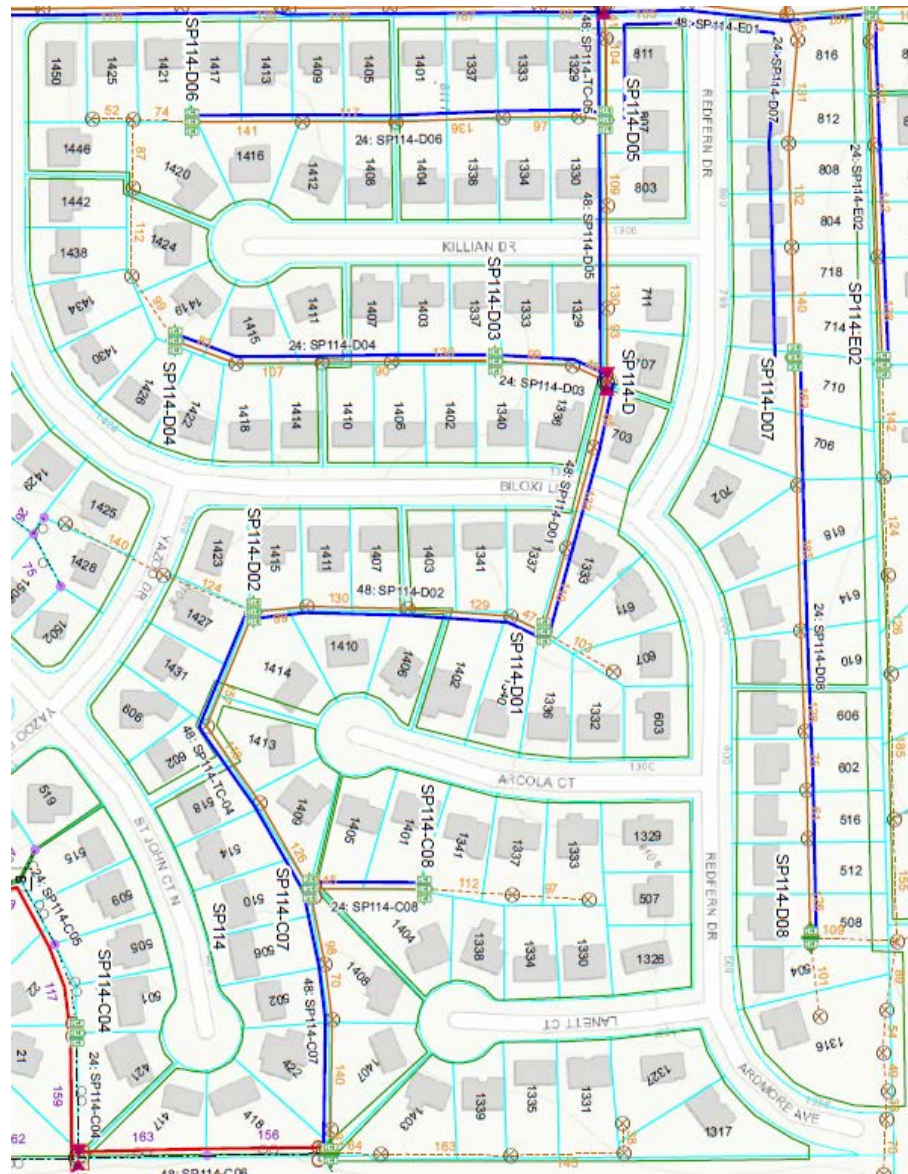
-  1x4 Terminal Boundary

FiberCable

-  <all other values>

Construction Type

-  Aerial
-  Underground



Example Rear Easement

Legend

	SDE.Revision
	SDE.CLOUD
	Hatched
	Excluded
Strand	
	Unknown
	Strand
	Drop Strand
Conduit	
	<all other values>
Duct Count	
	<Null>
	1
	2
	3
	4
	5
	6
Structure	
	Large Handhole
	Null Pedestal
	Pedestal
	Small Handhole
	Utility Box
	Slack Loop
	Riser
Pole	
	Joint
	Anchors and Guys
1x4 Boundaries	
Type	
	1x4 Terminal Boundary
FiberCable	
	<all other values>
Construction Type	
	Aerial
	Underground

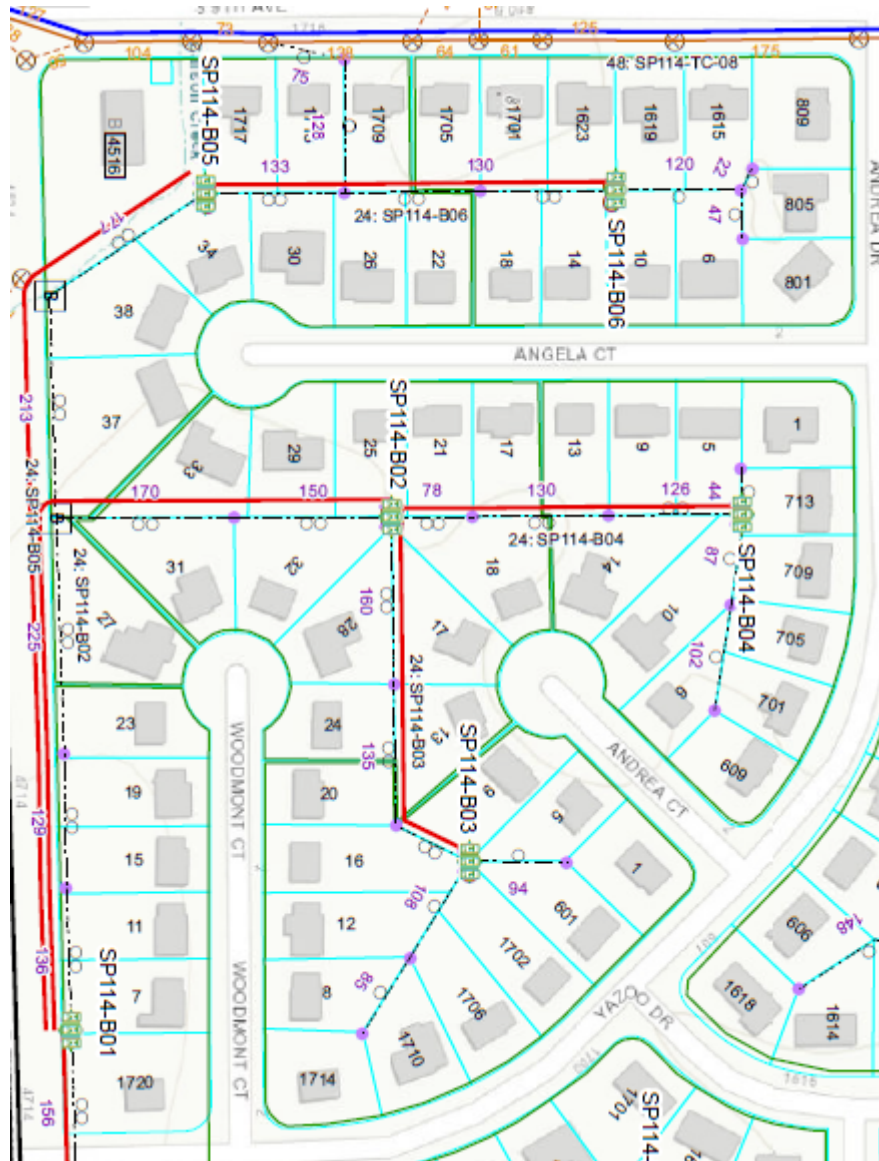


EXHIBIT D
SUMMARY OF ORDINANCE FOR PUBLICATION

AN ORDINANCE GRANTING A FRANCHISE TO CMN-RUS, INC. TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE SYSTEM IN THE CITY OF NORTHFIELD, MINNESOTA SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM AND THE PUBLIC RIGHTS-OF-WAY; AND PRESCRIBING PENALTIES FOR THE VIOLATION OF THE PROVISIONS HEREIN.

On _____, 2021, the City of Northfield, Minnesota ("City") adopted an ordinance granting a Cable Television Franchise to CMN-RUS, Inc. ("Grantee"). The Franchise serves two (2) purposes. First, it is intended to provide for and specify the means to attain the best possible Cable Service for the public by providing requirements for cable with respect to technical standards, customer service obligations, and related matters. Second, it grants a non-exclusive Cable Television Franchise to Grantee, to operate, construct and maintain a Cable System within the City and contains specific requirements for Grantee to do so.

The Franchise includes the following: 1) a Franchise Fee of five percent (5%) of Grantee's annual Gross Revenues; 2) a Franchise term of ten (10) years; 3) a list of schools and public buildings entitled to receive complimentary Cable Service; 4) dedicated channel capacity for Public, Educational and Governmental ("PEG") access programming and provides financial support of such PEG Channels; 5) customer service standards regarding Grantee's Cable Services; and 6) a performance bond to enforce Grantee's compliance with the franchise.

It is hereby determined that publication of this title and summary will clearly inform the public of the intent and effect of Ordinance No. _____. A copy of the entire ordinance shall be posted at the Northfield City Hall.

It is hereby directed that only the above title and summary of Ordinance No. _____ be published, conforming to Minn. Stat. § 331A.01, with the following:

NOTICE

Persons interested in reviewing a complete copy of the ordinance may do so at the Northfield City Hall at 801 Washington Street, Northfield, MN 55057 during the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday.

	<u>Yes</u>	<u>No</u>
Mayor _____	_____	_____
Councilmember _____	_____	_____
Councilmember _____	_____	_____
Councilmember _____	_____	_____
Councilmember _____	_____	_____
Councilmember _____	_____	_____
Councilmember _____	_____	_____

Passed by the Northfield City Council this _____ day of _____, 2021.

ATTEST: _____, Mayor

_____, _____