

## **ORDINANCE NO. 41**

AN ORDINANCE GRANTING A FRANCHISE TO RS FIBER COOP BY BROWNTON, MINNESOTA, TO CONSTRUCT, OPERATE, AND MAINTAIN A CABLE SYSTEM IN THE CITY OF BROWNTON, 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;

The City of Brownton ordains:

### **STATEMENT OF INTENT AND PURPOSE**

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

Past studies by the City have led the way for organizing a means of procuring and securing a Cable System which, in the judgment of the City, is best suited to meet the needs of the community. This has resulted in the preparation and adoption of this Franchise.

### **FINDINGS**

In the review of the request for a cable franchise by RS Fiber Coop ("Grantee") and negotiations related thereto, and as a result of a public hearing, the City makes the following findings:

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

## SECTION 1.

### SHORT TITLE AND DEFINITIONS

1. Short Title. This Franchise Ordinance shall be known and cited as the Cable Communications Ordinance.
2. Definitions. For the purposes of this Franchise, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words in the singular number include the plural number. The words "shall" or "must" are always mandatory and not merely directory. The word "may" is directory and discretionary and not mandatory.
  - a. "Basic Cable Service" means 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. § 543(b) (7) (1993).
  - b. "Cable System" or "System" means a system of antennas, cables, wires, lines, towers, waveguides, or other conductors, Converters, equipment, or facilities located in the City and designed and constructed for the purpose of producing, receiving, transmitting, amplifying, or distributing audio, video, and data. System as defined herein shall not be inconsistent with the definitions set forth in Minn. Stat. § 238.02, subd. 3 and 47 U.S.C. § 522(7) (1993).
  - c. "Cable Service" or "Service" means the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service pursuant to Minn. Stat. § 238.01 et seq. and 47 U.S.C. § 521 et seq., as may be amended from time to time.
  - d. "Class IV Channel" means a signaling path provided by a Cable System to transmit signals of any type from a Subscriber terminal to another point in the System.
  - e. "City" means the City of Brownton, Minnesota or its delegate.

- f. "Converter" means an electronic device which converts signals to a frequency acceptable to a television receiver of a Subscriber and by an appropriate selector permits a Subscriber to view all Subscriber signals included in the service.
- g. "Drop" means the cable that connects the ground block on the Subscriber's residence to the nearest feeder cable of the System.
- h. "FCC" means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.
- i. "Franchise" or "Cable Franchise" means this ordinance.
- j. "Franchise Area" means the area within the municipal boundaries of Brownton.
- k. "Franchise Fee" means the tax, fee or assessment imposed by the City on a Grantee solely because of its status as a recipient of a Cable Franchise. The term "Franchise Fee" does not include: (i) any tax, fee or assessment of general applicability; (ii) any payments which are required by this Franchise for, or in support of the use of public, educational, or governmental access facilities; (iii) any capital costs required by this Franchise incurred by Grantee for public, educational, or governmental access facilities; (iv) requirements or charges incidental to awarding or enforcing this Franchise, including payments for bonds, security funds or letters of credit, insurance, indemnification, penalties or liquidated damages; (v) any fee imposed under Title 17 of the United States Code.
- l. "Grantee" is RS Fiber Coop, a Minnesota cooperative, its agents and employees, lawful successors, transferees or assignees.
- m. "Gross Revenues" means all revenue received directly or indirectly by the Grantee, its affiliates, subsidiaries, parent, or person in which Grantee has financial interest of five percent (5%) or more, from the operation of its System to provide Cable Services in the Service Area. Gross Revenues shall include but not be limited to revenues or receipts from Cable Service fees including premium, pay-per-view, Pay Television, and similar fees, late fees, guide fees, Installation and reconnection fees, upgrade and downgrade fees, Franchise Fee receipts, leased channel fees, Converter rental fees, or Lockout Device fees. The term Gross Revenues shall not include bad debt, or any taxes on services furnished by Grantee which are imposed by any municipality, state, or other governmental unit and collected by Grantee for such governmental unit. Gross Revenues shall also not include any PEG Fees billed to or collected from Subscribers.

- n. "Installation" means the connection of the System from feeder cable to the point of connection, including any Standard Installation and any custom installation.
- o. "Lockout Device" means an optional mechanical or electrical capability which inhibits the viewing of a certain program, certain channel, or certain channels provided by way of the Cable Communication System.
- p. "Node" means the demarcation point in the System, and associated equipment, where fiber optic components and optical signals are converted to coaxial components and analog or baseband signals.
- q. . "Normal business hours" means at least 8 a.m. to 5 p.m. In all cases, "normal business hours" must include some evening hours at least one night per week and/or some weekend hours.
- r. "Normal operating conditions" means those service conditions which are within the control of Grantee. Those conditions which are typically not within the control of Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are typically within the control of Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the System.
- s. "Person" is any person, firm, partnership, association, corporation, company, or other legal entity.
- t. "Right-of-Way "or "Rights-of-Way "means the area on, below, or above any real property in the Franchise Area in which City has an interest including, but not limited to any street, road, highway, alley, sidewalk, parkway, park, skyway, or any other place, area, or real property owned by or under the control of the City, including any other Rights-of- Way dedicated for travel purposes and utility easements.
- u. "Right-of-Way Ordinance" means such ordinance adopted by the City creating requirements regarding regulation, management and use of Rights-of-Way, including registration and permitting requirements.
- v. "Service interruption" means the loss of picture or sound on one or more cable channels (for longer than a momentary period).
- w. "Standard Installation" means any residential installation which can be completed using a Drop of 500 feet or less.
- x. "Subscriber" means any Person who lawfully receives service via the System.

## SECTION 2.

### GRANT OF AUTHORITY AND GENERAL PROVISIONS

1. Grant of Franchise. This Franchise is granted pursuant to the terms and conditions contained herein.
2. Franchise Required. It shall be unlawful for any Person to construct, operate or maintain a System or provide Service in City unless such Person shall first obtain and hold a valid Franchise.
3. Grant of Nonexclusive Authority.
  - a. 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, operate and maintain 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 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.
  - b. 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 created or dedicated, with the present use of such Rights-of-Way, and with all legal requirements related to the use of such Rights-of-Way, including the terms and conditions of any applicable Right- of-Way Ordinance.
  - c. This Franchise shall be nonexclusive and City reserves the right to grant similar use to any Person at any time during the term of this Franchise, provided, however, that any additional Cable Franchises granted by the City shall be granted on terms and conditions which, taken as a whole, are no more favorable nor less burdensome than those imposed in this Franchises.
4. Lease or Assignment Prohibited. No Person may lease all or a portion of a Grantee's System for the purpose of providing Service until and unless such Person shall have first obtained and shall currently hold a valid Franchise.
5. Franchise Term. This Franchise shall be in effect for a period of fifteen (15) years from acceptance by the Grantee.

6. Previous Franchises. No previous franchise exists between City and Grantee.
  
7. 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. § 238.01 et seq.
  
8. Territorial Area Involved/Service Extension.
  - a. This Franchise is granted for the corporate boundaries of the City, as it exists from time to time. Grantee shall be required to extend Service to any requesting Person or area in the event there is a minimum of ten (10) homes per cable mile of plant which would need to be constructed to serve such Person or area. In such case, Grantee shall not charge an additional fee or assessment for the extension of the System and the provision of Service beyond the Grantee's normal installation charge and monthly service fees. In addition, Grantee shall extend Service to any Person requesting Service, regardless of home density, 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 ten (10) 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.
  
  - b. If a Subscriber requires a non-Standard Installation (*e.g.* a Drop in excess of 500 feet), Grantee shall, upon request, provide a quote for construction of the non-Standard Installation and shall establish a mutually acceptable payment schedule not to exceed one (1) calendar year.
  
  - c. Grantee shall be given a reasonable period of time to construct and activate cable plant to provide Service to annexed or newly developed areas but in no event shall such period exceed twelve (12) months from notice thereof by City to Grantee.
  
  - d. Access to Service shall not be denied to any group of potential residential cable Subscribers because of the income of the residents of the area in which such group resides.

9. 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 forty-eight (48) hours after it is deposited in the United States mail in a sealed envelope, with registered or certified mail postage prepaid thereon, addressed to the party to whom notice is being given, as follows:

If to City:

City of Brownton  
c/o City Administrator  
PO Box 238  
Brownton, MN 55312

If to Grantee:

RS Fiber Coop  
P.O. Box 326 Gaylord, MN 55334

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

### **SECTION 3.**

#### **CONSTRUCTION STANDARDS**

1. Construction Codes and Permits.
  - a. Grantee shall obtain all lawful and necessary permits from City before commencing any construction or extension of System, including the opening or disturbance of any Right-of-Way, or private or public property within City. Grantee shall comply with all state and local laws and building and zoning codes currently or hereafter applicable to location, construction, installation, operation or maintenance of the System in the City and give due consideration at all times to the aesthetics of the property.
  - b. The City shall have the right to inspect all construction or installation work performed pursuant to the provisions of the Franchise and to make

such tests as it shall find necessary to ensure compliance with the terms of the Franchise and applicable provisions of local, state and federal law.

2. Repair of Rights-of-Way and Property. Any and all Rights-of-Way or public or private property, which are disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance or reconstruction of the System shall be promptly and fully restored by Grantee, at its expense, to the same condition as that prevailing prior to Grantee's work, as approved by City in the case of Rights-of- Way and other public property, which approval shall not be unreasonably withheld. If Grantee fails to promptly perform the restoration required herein, City may perform the restoration of the Rights-of-Way, public, or private property as required herein at Grantee's expense.
  
3. Conditions on Right-of-Way Use.
  - a. Nothing in this Franchise shall be construed to prevent 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 any water mains; or constructing, maintaining, relocating, or repairing any sidewalk or other public work.
  
  - b. 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, plats, and permanent records of the location and character of all facilities constructed, including underground facilities, and Grantee shall file with City updates of such maps, plats and permanent records annually.
  
  - c. If at any time during the period of this Franchise City shall elect to alter or change the grade or location of any Right-of-Way, the Grantee shall, upon reasonable notice and in a manner consistent with applicable ordinances, remove and relocate its poles, wires, cables, conduits, manholes and other fixtures of the System. If the City enters into an agreement to reimburse other occupants of the Right-of-Way for such relocation or removal, Grantee shall be likewise reimbursed.
  
  - d. The Grantee shall not place poles, conduits, or other fixtures of 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 use its best efforts to obtain the permission and consent of any utility company for the use of existing poles, conduits or other wire-holding structures located in 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.

- e. The Grantee shall, upon request of any Person holding a moving permit issued by City, temporarily move its wires or fixtures to permit the moving of buildings with the expense of such temporary removal to be paid by the Person requesting the same, and the Grantee shall be given not less than ten (10) days advance notice to arrange for such temporary changes.
  - f. The Grantee shall have the authority to trim any trees upon and overhanging the Rights-of-Way only to the extent necessary to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee.
  - g. Grantee shall give reasonable prior notice to any private property owners who will be directly affected or impacted by Grantee's work in Rights-of-Way.
4. Undergrounding of Cable. Grantee shall place its System and facilities underground in areas of the City where all other utility lines are placed underground. 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 City in accordance with applicable requirements.
5. Drop Burial. Grantee shall bury all Drops in a reasonable time period which shall not exceed thirty (30) days weather permitting. In the event the ground is frozen, Grantee shall be permitted to delay burial until the ground is suitable for burial which in no event shall be later than June 30th.
6. 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 City with regard to location, height, type and other pertinent aspects.
7. Safety Requirements.
- a. 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.

- b. The Grantee shall install and maintain its System and other equipment and facilities in accordance with all federal, state and local 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 City or of any public utility serving City.
- c. 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.

8. Emergency Use of Facilities. In the case of any emergency or disaster, the Grantee shall upon request of the City, make available its facilities to City during the period of emergency or disaster. Moreover, at all times during the term of this Franchise, Grantee shall provide and maintain an Emergency Alert System (EAS) consistent with applicable federal law and regulations including 47 C.F.R., Part 11, and any Minnesota State Emergency Alert System requirements. The City may identify Authorized emergency officials for activating the EAS consistent with the Minnesota State Emergency Statewide Plan ("EAS Plan").

## **SECTION 4.**

### **DESIGN PROVISIONS**

- 1. Minimum Channel Capacity.
  - a. Grantee shall maintain, at a minimum, a fiber optic Cable System which shall be capable of delivering a minimum of two hundred (200) digital programming channels with over 100 high definition channels as well as 36 premium channels, 7 pay-per-view channels, video on demand and 45 digital music channels, provided that the Grantee may modify its system architecture in the future.
  - b. All programming decisions remain the discretion of Grantee; provided, however, that any change in the broad categories of video programming or other information services shall require the approval of the City consistent with 47 U.S.C. § 544(b), which approval shall not be unreasonably withheld, and further provided 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 or other community programming channel required hereunder without prior approval of the City.

2. Drops to Public Buildings. Grantee shall provide, free of charge, Installation of one (1) two-way activated cable Drop, one (1) cable outlet, and monthly Cable Service without charge to the institutions identified in Exhibit A attached and such other public or educational institutions which the City may designate and which are within 200 feet of the System. The free Cable Service provided herein shall include the Basic Service Tier and any other tiers of Service containing news or other public interest programming.

No redistribution of the free Service provided pursuant to this Section shall be allowed without the Grantee's prior written consent. Additional Drops and/or outlets in any of the above locations shall be provided by Grantee at the cost of Grantee's time and material. Alternatively, at the institution's request, said institution may add outlets at its own expense, as long as such Installation meets applicable FCC technical standards. Drops to subsequently designated institutions in excess of 200 feet shall be provided by the Grantee at the cost of Grantee's time and materials less the cost of the 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.

3. 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.
4. Construction Timetable. Grantee shall complete construction related to the System upgrade required herein and activate such upgrade within 18 months of the effective date of this Franchise. Failure to timely complete such construction shall be a violation of this Franchise.
5. Operation and Maintenance of System. The Grantee shall render good quality Service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such interruption, to the extent feasible, shall be preceded by notice in accordance with Section 2.9 herein and shall occur during periods of minimum use of the System.
6. Technical Standards. The technical standards used in the operation of the System shall comply, at minimum, with the technical standards promulgated by the FCC relating to Cable Systems pursuant to 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. Any failure to comply with the FCC technical standards, as may be determined below, shall be a violation

of this Franchise and shall subject Grantee to penalties or Franchise termination as provided herein.

7. Performance Review and System Testing.
  - a. The City may test the System at any time upon at least five (5) days prior written notice to Grantee and at a time which will create the least disruption to Subscribers. The City may review FCC and other technical reports provided by the Grantee or procured by the City at any time. The City may engage any consultant, engineer or expert to perform such testing and review at no cost to Grantee.
  - b. The City may require special testing of a location or locations within the System or testing of the System as a whole. The City shall endeavor to so arrange its request for such special testing to minimize hardship or inconvenience to Grantee or to the Subscribers.
  - c. In the event special testing is ordered based on concern(s) regarding System performance, Grantee shall be afforded ten (10) days to correct problems or complaints before ordering such tests. If the performance difficulty is not resolved after the ten (10) day cure period has elapsed, in City's reasonable determination, the tests shall be conducted within seven (7) days by a qualified consultant selected by Grantee from a list of at least three (3) choices provided by City. City shall consult with Grantee in preparing the list of choices. In the event that special testing determines that the System or Grantee is the source of technical difficulties in violation of the FCC technical specifications as required by this Franchise, the cost of said testing shall be reimbursed by the Grantee. City and Grantee may agree as to the cause of the noncompliance and the appropriate remedy for such noncompliance, and City may waive any of the requirements herein based on such agreement.
8. FCC Reports. The results of any tests required to be filed by Grantee with the FCC shall also be filed with the City or its designee within ten (10) days of the conduct of such tests.
9. Nonvoice Return Capability. Grantee is required to use cable having the technical capacity for nonvoice return communications.
10. Lockout Device. Upon the request of a Subscriber, Grantee shall provide a Lockout Device.

**SECTION S.  
SERVICES PROVISIONS**

1. Regulation of Service Rates.
  - a. The City may regulate rates for the provision of Cable Service, equipment, or any other communications service provided over the System to the extent allowed under federal or state law(s).
  - b. 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.
  
2. Sales Procedures. Grantee shall not exercise deceptive sales procedures when marketing any of its services within City. Grantee shall have the right to market consistent with local ordinances and other applicable laws and regulations.
  
3. Telephone Inquiries and Complaints.
  - a. Availability. Grantee will maintain an adequate number of local, toll-free or collect call telephone access lines which will be available to its Subscribers 24 hours a day, seven 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.
  
  - b. 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 when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall

be met no less than ninety (90) percent of the time under normal operating conditions, measured on a quarterly basis. Under normal operating conditions, the customer will receive a busy signal less than three (3) percent of the time.

4. Installation Outage and Service Calls. 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) Standard Installations will be performed within seven (7) business days after an order has been placed and all other Installations will be performed within a reasonable period of time; (2) Excluding conditions beyond the control of Grantee which prevent performance, Grantee will begin working on service interruptions promptly, and in no event later than twenty-four (24) hours after the interruption becomes known, and Subscriber requests for repairs shall be performed by the end of the next business day after the request is received; (3) The "appointment window" alternatives for Installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. The Grantee may schedule service calls and other installation activities outside of normal business hours for the 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, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.
5. Complaint and Other Service. Records Subject to Grantee's obligation 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 provide the City with a written summary of such complaints and their resolution on a quarterly basis and in a form mutually agreeable to City and Grantee. Grantee may be required to provide detailed compliance reports on a quarterly basis with respect to the objectively measurable service standards herein upon written demand by the City.
6. 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 cable operator must respond to a written complaint from a subscriber within 30 days.

7. Subscriber Contracts. Grantee shall file with the City any standard form Subscriber contract utilized by Grantee. If no such written contract exists, Grantee shall file with the City a document completely and concisely stating the length and terms of the Subscriber contract offered to customers. The length and terms of any Subscriber contract(s) shall be available for public inspection during normal business hours.
8. 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 the return of the equipment supplied by the Grantee if Service is terminated. If Service is interrupted or discontinued for 24 or more consecutive hours, Subscribers shall be credited pro rata for such interruption beginning with the date of interruption. Credits for will be issued no later than the Subscriber's next billing cycle following the determination that a credit is warranted.
9. Late Fees. Fees for the late payment of bills shall not accrue until the normal billing cut-off for the next month's service. Payments at the cable operator's drop-box location shall be deemed received on the date such payments are picked up by the cable operator which shall occur within 24 hours after every due date. The cable operators 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 as may be determined by a court of competent jurisdiction.
10. Drop Box. Grantee shall maintain a local drop box for receiving subscriber payments after hours.
11. 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 law.
12. Violations. Any violation of these requirements shall be deemed a violation of this Franchise and shall subject Grantee to all remedies, penalties, and sanctions provided for herein including Franchise termination. City's determination of a violation of these requirements may be made on the basis of individual complaints received and need not be made on the basis of scientific study or surveys. Grantee may demonstrate compliance or seek to refute a determination of violation through the use of specialized reporting equipment and/or by performing statistically significant and accurate surveys. In the event Grantee acquires such equipment or performs such a survey, the results shall be provided to City as part of the quarterly reports to City required herein.

## SECTION 6.

### ACCESS CHANNEL(S) PROVISIONS

1. Public, Educational and Government Access.
  - a. PEG Administration. The City or its designee (hereinafter "City") is hereby designated to operate, administer, promote, and manage public, education and government access (hereinafter "PEG access") in the Cable System established pursuant to this Section.
  - b. Video Channels. Grantee shall dedicate three (3) channels, with channel defined as a six (6) MHz spectrum allocation, for video PEG access uses. The City may rename, reprogram, or otherwise change the use of the channel in its sole discretion, provided such use is non-commercial and retains the general purpose of the provision of community programming.
  - c. Additional Video Channels. Whenever the channel as required by paragraph  
b. herein is in use for more than eighty percent (80%) of prime time (as defined in Section 76.5(n) of the FCC rules and regulations) and more than fifty percent (50%) outside of prime time over a three-month period, with at least fifty percent (50%) of the programming being original and not duplicated, and there is demand for use of additional channels for the same purpose, upon request of City, the Grantee shall have six (6) six months to make an additional channel available for the same purpose.
  - d. HD Capacity. Grantee shall provide the PEG Channels on the Basic Cable Service tier. Upon written request by the City, Grantee shall provide up to two (2) PEG Channels in high definition (HD) on an HD tier then- available. For each HD channel requested, the Grantee may discontinue one non-HD PEG Channel selected by the City. The City shall be responsible for all equipment and associated costs of providing HD programming beyond the demarcation point, and the Grantee shall be responsible for all System equipment and costs associated with providing the HD channels on its side of the demarcation point.
  - e. Channel Guide. If Grantee deploys a visual interface under its control for its channels, the PEG Channels shall be treated in a non-discriminatory fashion so Subscribers have ready access to such channels.



- f. Live Video Origination. Grantee shall provide and maintain free of charge at least one (1), six (6) MHz channel from among the PEG channels (selected cooperatively by the City and Grantee) for the City's origination of real time (i.e. live) video programming. Grantee shall provide the System equipment necessary to deliver real time video over such capacity and provide appropriate coaxial Drops to those institutions listed in Exhibit A to accommodate use of such capacity. The City shall be responsible for providing terminal equipment. The City and Grantee may agree to terms and conditions concerning transmission speed, capacity, bit error rates and other appropriate terms. The capacity shall be non-assignable and shall be used solely for non-commercial applications.
2. Charges for Use. Channel time and deliver of real time programming or playback of prerecorded programming on the video PEG access channel(s) must be provided without charge to the City.
3. Access Rules. City may implement rules for use of any PEG access channels. Prior to the cablecast of any program on any PEG access channel established herein, City may require any Person who requests access to System to provide written certification which releases, indemnifies, and holds harmless City, Grantee and their respective employees, officers, agents, and assigns from liability, cost, damages and expenses, including reasonable expenses for legal fees, arising or connected in any way with said program or programming. If Grantee chooses to enforce a policy regarding obscene programming pursuant to 47 U.S.C. § 532(c), City shall incur no liability in that regard and Grantee hereby specifically indemnifies and holds City harmless with respect to implementation of any such policy.
4. Access Support.
  - a. Capital Support. Upon the Effective Date of this Franchise, Grantee shall pay to the City, the sum of Seven Thousand Five Hundred Dollars (\$7,500.00) in order to purchase equipment related to PEG access programming and other capital expenses related to the provision of PEG access. Grantee shall not itemize or pass through said amount to Subscribers.
  - b. Other Support. The City may require Grantee to collect from Subscribers and quarterly pay to the City in support of PEG access the full amount of revenues generated by up to a Fifty Cents (\$.50) per month, per Subscriber fee. The City may increase the fee to no more than One Dollar (\$1.00) upon a determination by the City Council that PEG access equipment needs require such increase. The amount of the fee shall not be considered gross revenues subject to the payment of Franchise Fees. Such payment shall be separate from and in addition to the Franchise Fee. In the event Grantee elects to itemize such fee, the itemization may

only be termed "PEG Fee." The City may require the Grantee to implement or modify the amount of the fee upon ninety (90) days written notice or such longer period as may be required in accordance with applicable FCC rate regulations.

## SECTION 7.

### OPERATION AND ADMINISTRATION PROVISIONS

1. Administration of Franchise. The City shall have continuing regulatory jurisdiction and supervision over the System and the Grantee's operation under the Franchise.
  
2. Franchise Fee.
  - a. Grantee shall pay to the City a Franchise Fee in an annual amount equal to five percent (5%) of its annual Gross Revenues.
  
  - b. Payments due under this provision shall be payable quarterly. The payment shall be made within sixty (60) days of the end of each of Grantee's fiscal quarters together with a report in form reasonably acceptable to City which shows the basis for the computation.
  
  - c. All amounts paid shall be subject to audit and recomputation by the City and acceptance of any payment shall not be construed, as an accord that the amount paid is in fact the correct amount.  
  
  - d. In the event Grantee bundles or combines Cable Services subject to the Franchise Fee with non-Cable Services which are not subject to the Franchise Fee so that Subscribers pay a single fee for more than one (1) class of service resulting in a discount on Cable Services, Grantee agrees that for the purpose of calculation of the Franchise Fee, it shall allocate to Cable Service revenue no less than a pro rata share of the revenue received for the bundled or combined services. The pro rata share shall be computed on the basis of the published charge for each service in the bundled or combined classes of services when purchased separately.
  
  - e. Any Franchise Fees owing pursuant to this Franchise which remain unpaid more than thirty (30) days after the end of a given quarter shall be delinquent and shall immediately thereafter accrue simple interest at

twelve percent (12%) per annum. Grantee shall in all cases be subject to interest on any payment more than thirty (30) days after the end of a given quarter.

- f. Grantee acknowledges and agrees that the Franchise Fees payable by Grantee to the City pursuant to this section shall take precedence over all other material provisions of the Franchise and shall not be deemed to be in the nature of a tax, and shall be in addition to any and all taxes of general applicability and other fees and charges which do not fall within the definition of a Franchise Fee under 47 U.S.C. § 542. Grantee shall not apply or seek to apply all or any part of any taxes, fees or assessments of general applicability as a deduction or other credit from or against any of the Franchise Fees or other payments or contributions to be paid or made by Grantee pursuant to this Franchise which shall be deemed to be separate and distinct obligations of Grantee.
3. Access to Records: Audit. Upon ten (10) days prior written notice, the City shall have the right to conduct an independent audit of Grantee's records. If such audit indicates a Franchise Fee underpayment of five percent (5%) or more of the Franchise Fee due, the Grantee shall assume all of City's out-of-pocket costs associated with the conduct of such an audit. Grantee shall either (i) remit to City all applicable Franchise Fees and PEG fees due and payable together with all accrued interest as set forth above within 30 days of receiving the audit statement; or (ii) provide written notice to City that it disputes the audit finding within the same 30 days of receiving the audit statement in which case the procedures of Section 8.3 shall apply.
4. Reports and Maps to be Filed with the City.
  - a. In addition to the reports specifically required by the terms of this Franchise, Grantee shall prepare and furnish to the City, at the times and in the form prescribed, and other reports related to the System which City may reasonably request.
  - b. Grantee shall furnish to and file with the City upon request the maps, plats, and permanent records of the location and character of all facilities constructed, including underground facilities.
5. Periodic Evaluations. The City may require evaluation sessions at any time during the term of this Franchise, upon sixty (60) days written notice to Grantee. All evaluation sessions shall be open to the public. Topics which may be discussed at any evaluation session include, but are not limited to, application of new technologies, System performance, programming offered, PEG access channels, facilities and support, customer complaints, amendments to this Franchise, changes in applicable law and statutes, line extension policies and any other topics the City deems relevant. As a result of a periodic review or evaluation session, the City may request that Grantee agree to amend

the Franchise and/or provide additional services and/or upgrade the System to the extent economically and technically feasible.

## **SECTION 8.**

### **GENERAL FINANCIAL, INSURANCE AND SECURITY PROVISIONS**

1. Performance Bond.
  - a. At the time the Franchise becomes effective and at all times thereafter, until the Grantee has liquidated all of its obligations with the City, but in no event longer than five (5) months after expiration or termination, the Grantee shall furnish a bond to the City in the amount of Fifty Thousand Dollars (\$50,000.00) in a form and with such sureties as are reasonably acceptable to the City. This bond will be conditioned upon the faithful performance of the Grantee according to the terms of the Franchise and upon the further condition that in the event the Grantee shall fail to comply with any law, ordinance, regulation, or the Franchise, there shall be recoverable jointly and severally from the principal and surety of the bond any damages or loss suffered by the City, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the Grantee, plus a reasonable allowance for attorneys' fees and costs, up to the full amount of the bond, and further guaranteeing payment by the Grantee of claims, liens and taxes due the City which arise by reason of the construction, operation, or maintenance of the System. The City may, from year to year, in its sole discretion, reduce the amount of the bond.
  - b. In the event this Franchise is canceled by reason of default of Grantee or revoked, the City shall be entitled to collect from the performance bond that amount which is attributable to any damages sustained by the City pursuant to said default or revocation. Grantee, however, shall be entitled to the return of such performance bond, or portion thereof, as remains at the expiration of the term of the Franchise.
  - c. The rights reserved to the City with respect to the performance bond shall not be deemed an exclusive remedy and are in addition to all other rights of the City whether reserved by this Franchise or authorized by law, and no action, proceeding or exercise of a right with respect to the performance bond shall affect any other right the City may have. The amount of the bond shall not in any way limit the extent of Grantee's liability to City.
2. Construction Bond. Upon Grantee's initiation of construction and System upgrade in City as required by this Franchise, Grantee shall increase the performance bond to One Hundred and Fifty Thousand Dollars (\$150,000.00).

Grantee shall maintain such bond(s) during the term of the construction upon the terms and conditions provided above. Upon completion of such construction, Grantee shall provide written notice to City. Within thirty (30) days of receipt of said notice, City shall indicate in writing its agreement or specify those items of construction which City determines are incomplete. At such time as City and Grantee mutually and in good faith agree that said construction is complete, Grantee shall be required to provide City only with a performance bond as required above.

3. Letter of Credit.

- a. At the time of acceptance of this Franchise, Grantee shall deliver to the City an irrevocable and unconditional Letter of Credit, in form and substance acceptable to the City, from a National or State bank approved by the City, in the amount of Ten Thousand Dollars (\$10,000.00). Any interest on the deposit shall accrue to the Grantee.
- b. The Letter of Credit shall provide that funds will be paid to the City, upon written demand of the City, and in an amount solely determined by the City, in payment for penalties charged pursuant to this section, in payment for any monies owed by Grantee pursuant to its obligations under this Franchise, or in payment for any damage incurred as a result of any acts or omissions by Grantee pursuant to this Franchise.
- c. In addition to recovery of any monies owed by Grantee to the City or damages to the City as a result of any acts or omissions by Grantee pursuant to the Franchise, the City, in its sole discretion, may charge to and collect from the Letter of Credit the following penalties:
  - i. For failure to complete system upgrade as provided herein, unless the City approves the delay, the penalty shall be Two Hundred Dollars (\$200.00) per day for each day, or part thereof, such failure occurs or continues.
  - ii. For failure to provide data, documents, reports or information required herein or for failure to cooperate with the City during an application process or system review or as otherwise provided herein, the penalty shall be Fifty Dollars (\$50.00) per day for each day, or part thereof, such failure occurs or continues.
  - iii. For failure to comply with construction, operation and customer service, or maintenance and technical standards, the penalty shall be One Hundred Dollars (\$100.00) per day for each day, or part thereof, such failure occurs or continues.
  - iv. For failure to provide the services Grantee has proposed, including, but not limited to, the implementation and the utilization of the

access channels and the maintenance and/or replacement of the equipment and other facilities, the penalty shall be One Hundred Dollars (\$100.00) per day for each day, or part thereof, such failure occurs or continues.

- v. For violation of any other provision of this Franchise or applicable federal, state, or local law or regulation, the penalty shall be Fifty Dollars (\$50.00) per day for each day, or part thereof, such violation continues.
- d. Each violation of any provision of this Franchise shall be considered a separate violation for which a separate penalty can be imposed.
- e. Whenever the City finds that Grantee has violated one or more terms, conditions or provisions of this Franchise, a written notice shall be given to Grantee informing it of such violation. At any time after thirty (30) days following receipt of notice, provided Grantee remains in violation of one or more terms, conditions or provisions of this Franchise, in the reasonable determination of the City, the City may draw from the Letter of Credit all penalties or monies due the City from the date of the local receipt of notice. The City may grant additional time beyond the initial thirty (30) days in the event the City determines such additional time is necessary to cure the alleged violation.
- f. Grantee may, within fifteen (15) days of receipt of such notice, notify the 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 the City shall specify with particularity the matters disputed by Grantee. All penalties shall continue to accrue and the City may draw from the Letter of Credit at the end of the thirty (30) day cure period notwithstanding Grantee's dispute regarding the violation.
  - 1. The City shall hear Grantee's dispute at the next regularly scheduled meeting.
  - 11. Upon determination by the City that no violation has taken place, the City shall rescind the notice of violation and refund to Grantee, without interest, all monies drawn from the Letter of Credit by reason of the alleged violation.
- g. If said Letter of Credit or any subsequent Letter of Credit delivered pursuant thereto expires prior to the expiration of the term of this Franchise, it shall be renewed or replaced during the term of this

Franchise to provide that it will not expire earlier than the expiration of this Franchise. The renewed or replaced Letter of Credit shall be of the same form and amount and with a bank authorized herein and any interest thereon shall accrue to the Grantee.

- h. If the City draws upon the Letter of Credit or any subsequent Letter of Credit delivered pursuant hereto, in whole or in part, Grantee shall replace the same within ten (10) days and shall deliver to the City a like replacement Letter of Credit for the full amount required herein as a substitution of the previous Letter of Credit, and any interest thereon shall accrue to the Grantee.
- i. If any Letter of Credit is not so replaced, the City may draw on said Letter of Credit for the whole amount thereof and use the proceeds as the City determines in its sole discretion. The failure to replace any Letter of Credit within ten (10) days may also, at the option of the City, be deemed a material default by Grantee under this Franchise. The
- j. drawing on the Letter of Credit by the 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.
- k. The collection by the City of any damages, monies or penalties from the Letter of Credit shall not be deemed an exclusive remedy and shall not affect any other right or remedy available to the City, nor shall any act, or failure to act, by the City pursuant to the Letter of Credit, be deemed a waiver of any right of the City pursuant to this Franchise or otherwise.

4. Indemnification.

- a. The City and its officers, boards, committees, elected officials, employees 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 the construction, operation, maintenance, repair or removal of, or other action or event with respect to the System or as to any other action or event with respect to this Franchise.
- b. Grantee shall indemnify, defend, and hold harmless the City, its officers, boards, committees, elected officials, employees and agents from and against all liability, damages, and penalties which they may legally be required to pay as a result of the exercise, administration, or enforcement of the Franchise including, but not limited to, the reimbursement to City of any insurance deductible paid by City.
- c. Nothing in this Franchise relieves a Person, except the City from

liability arising out of the failure to exercise reasonable care to avoid injuring the Grantee's facilities while performing work connected with grading, regarding, or changing the line of a Right-of-Way or public place or with the construction or reconstruction of a sewer or water system.

5. Insurance.

- a. Grantee shall file with its acceptance of this Franchise, and at all times thereafter maintain in full force and effect at its sole expense, a comprehensive general liability insurance policy, including broadcaster's/cablecaster's liability and contractual liability coverage, in protection of the Grantee, and the City, its officers, boards, committees, elected officials, employees and agents for any and all damages and penalties which may arise as a result of this Franchise. The policy or policies shall name the City as an additional insured, and in their capacity as such, the City officers, boards, committees, elected officials, employees and agents.
- b. The policies of insurance shall be in the sum of not less than One Million Dollars (\$1,000,000.00) for personal injury or death of any one Person, and Two Million Dollars (\$2,000,000.00) for personal injury or death of two or more Persons in any one occurrence, One Million Dollars (\$1,000,000.00) for property damage to any one person and Two Million Dollars (\$2,000,000.00) for property damage resulting from any one act or occurrence.
- 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.

**SECTION 9.**

**SALE, ABANDONMENT, AND TRANSFER OF FRANCHISE**

1. Abandonment of Service. Grantee may not abandon the System or any portion thereof without having first given three (3) months written notice to the City.



Grantee may not abandon the System or any portion thereof without compensating the City for damages resulting from the abandonment.

2. Removal after Abandonment, Termination or Forfeiture.

- a. In the event of termination or forfeiture of the Franchise or abandonment of the System, the City shall have the right to require Grantee to remove all or any portion of the System from all Rights-of-Way and public property within the City; provided, however, City may not require removal if Grantee is authorized to provide and is providing telecommunications services pursuant to state or federal law.
- b. If Grantee has failed to commence removal of System, or such part thereof as was designated by the City, within one hundred twenty (120) days after written notice of the City demand for removal is given, or if Grantee has failed to complete such removal within twelve (12) months after written notice of the City demand for removal is given, the City shall have the right to apply funds secured by the Letter of Credit and Performance Bond toward removal and/or declare all right, title, and interest to the System to be in the City with all rights of ownership including, but not limited to, the right to operate the System or transfer the System to another for operation by it pursuant to the provisions of 47 U.S.C. § 547.

3. Sale or Transfer of Franchise.

- a. No sale, transfer, or fundamental corporate change of or in Grantee, or which creates a new controlling interest in Grantee, including, but not limited to, the sale of a majority of 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 the parties to the sale, transfer, or corporate change file a written request with the City for its approval and such approval is granted by the City, provided, however, that said approval shall not be required where Grantee grants a security interest in its Franchise and assets to secure an indebtedness.
- b. Any sale, transfer, exchange or assignment of stock in Grantee so as to create a new controlling interest in the System shall be subject to the requirements of this Section 9.03. The term "controlling interest" as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised. As a minimum, "control" or "controlling interest" as used herein, means a legal or beneficial interest (even though actual working control does not exist) of at least five percent (5%).

- c. The City shall have such time as is permitted by applicable law in which to review a transfer request, but in no event less than one hundred and twenty (120) days.
- d. The Grantee shall reimburse City for all the reasonable legal, administrative, and consulting costs and fees associated with the City's review of any request to transfer. Such reimbursement of City's costs and fees shall not constitute a Franchise Fee. Nothing herein shall prevent Grantee from negotiating partial or complete payment of such costs and fees by the transferee.
- e. In no event shall a sale, transfer, corporate change, or assignment of ownership or control pursuant to Subparagraph (a) or (b) of this Section be approved without the transferee becoming a signatory to this Franchise and assuming all rights and obligations hereunder, and assuming all other rights and obligations of the transferor to the City.
- f. In the event of any proposed sale, transfer, corporate change, or assignment pursuant to subparagraph (a) or (b) of this Section, the City shall have the right of first refusal of any bona fide offer to purchase the System. Bona fide offer, as used in this Section, means an offer received by the Grantee which it intends to accept subject to the City rights under this Section. This written offer must be conveyed to the City along with the Grantee's written acceptance of the offer contingent upon the rights of the City provided for in this Section.

The City shall be deemed to have waived its rights under this Section in the following circumstances:

- i. If it does not indicate to Grantee in writing, within ninety (90) days of notice of a proposed sale or assignment, its intention to exercise its right of purchase; or
- ii. It approves the assignment or sale of the Franchise as provided within this Section.

## **SECTION 10.**

### **REVOCATION OF FRANCHISE**

1. City's Right to Revoke. In addition to all other rights which the City has pursuant

to law or equity, the City reserves the right to revoke, terminate or cancel this Franchise, and all rights and privileges pertaining thereto, if it is determined that Grantee has violated any material provision of this Franchise, has made intentional misrepresentations to City, or has practiced fraud or deceit upon the City of a Subscriber. The City may revoke this Franchise immediately if Grantee is adjudged bankrupt.

2. Procedures.

- a. The City shall provide Grantee with written notice of the cause for revocation and its intent to revoke and shall allow Grantee sixty (60) days subsequent to receipt of notice in which to correct the violation.
- b. Grantee shall be provided the right to a public hearing affording due process prior to revocation, which public hearing shall follow the sixty (60) day notice provided in subparagraph (a) above. The City shall provide Grantee with written notice of its decision together with written findings of fact supplementing said decision.
- c. After such public hearing and release of written findings, the City may revoke the Franchise. Grantee may appeal such revocation to a court or agency of competent jurisdiction.
- d. During the appeal period, Grantee may continue to operate the System pursuant to the terms and conditions of the Franchise, unless the term thereof sooner expires.

**SECTION 11.**

**PROTECTION OF INDIVIDUAL RIGHTS**

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 federal, state, and local laws, and all executive and administrative orders relating to nondiscrimination.

2. Subscriber Privacy.

- a. Grantee shall comply with the subscriber privacy-related requirements of 47 U.S.C. § 551. No signals including signals of a Class IV Channel

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

- b. No lists of the names and addresses of Subscribers or any lists that identify the viewing habits of Subscribers shall be sold or otherwise made available to any party other than to Grantee and its employees for internal business use, and also to the Subscriber subject of that information, unless Grantee has received specific written authorization from the Subscriber to make such data available. Such written permission shall be for a limited period of time not to exceed one (1) year which may be renewed at the option of the Subscriber. No penalty shall be invoked for a Subscriber's failure to provide or renew such authorization. The authorization shall be revocable at any time by the Subscriber without penalty of any kind whatsoever.
- c. Written permission from the Subscriber shall not be required for the conducting of System wide or individually addressed electronic sweeps for the purpose of verifying System integrity or monitoring for the purpose of billing. Confidentiality of such information shall be subject to the provision set forth in Subparagraph (b) of this Section.

## **SECTION 12.**

### **MISCELLANEOUS PROVISIONS**

- 1. Franchise Renewal. Any renewal of this Franchise shall be performed in accordance with applicable federal, state and local laws and regulations. The term of any renewed Franchise shall be limited to a period not to exceed fifteen (15) years.
- 2. Work Performed by Others. All 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 Person performing work obtain any rights to maintain and operate a System or provide Cable Service.

3. Amendment of Franchise Ordinance. Grantee and the City may agree, from time to time, to amend this Franchise. Such written amendments may be made subsequent to a review session pursuant to Section 7.5 or at any other time if the City and Grantee agree that such an amendment will be in the public interest or if such an amendment is required due to changes in federal, state or local laws, provided, however, nothing herein shall restrict the City's exercise of its police powers.
  
4. Compliance with Federal, State and Local Laws.
  - a. If any federal or state law or regulation shall require or permit the City or Grantee to perform any service or act or shall prohibit the 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 the City shall conform to state laws and rules regarding cable communications not later than one year after they become effective, unless otherwise stated, and to conform to federal laws and regulations regarding cable as they become effective.
  - b. 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 the City.
  
5. Non-enforcement by City. Grantee shall not be relieved of its obligations to comply with any of the provisions of this Franchise by reason of any failure or delay of the City to enforce prompt compliance. The City may only waive its rights hereunder by expressly so stating in writing. Any such written waiver by the 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.
  
6. Rights Cumulative. All rights and remedies given to the City by this Franchise or retained by the 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 the 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 the 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.

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

### **SECTION 13.**

#### **PUBLICATION EFFECTIVE DATE; ACCEPTANCE AND EXHIBITS**

1. Publication: Effective Date. This Franchise shall be published in accordance with applicable local and Minnesota law. The Effective Date of this Franchise shall be the date of acceptance by Grantee in accordance with the provisions of Section 13.2.
2. Acceptance.
  - a. Grantee shall accept this Franchise within sixty (60) days of its enactment by the City, 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. 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 previously granted to Grantee shall be null and void.
  - b. Upon acceptance of this Franchise, Grantee shall be bound by all the terms and conditions contained herein
  - c. Grantee shall accept this Franchise in the following manner:
    1. This Franchise will be properly executed and acknowledged by Grantee and delivered to the City.
    11. With its acceptance, Grantee shall also deliver any grant payments, performance bond and insurance certificates required herein that have not previously been delivered.

Passed and adopted this \_\_\_\_ day of \_\_\_\_\_, 2017.

ATTEST:

CITY OF BROWNTON

By:

It's:

ACCEPTED: This Franchise is accepted and the undersigned agrees to be bound by its terms and conditions.

RS FIBERCOOP

Dated:

By:

It's:

By:

It's:

## **EXHIBIT A**

The City will identify up to 3 institutional sites to receive Drops and capacity for purposes of live origination, at Grantee's expense, as provided above. Grantee will cover the cost of materials, construction and installation for the first 500' (measured from the nearest existing plant) to connect such sites.