

the City at the City's discretion. The City and the sites to which infrastructure is provided via the I-Net will use the I-Net in accordance with the limitations of this Franchise,

SECTION 8. OPERATION AND ADMINISTRATION PROVISIONS

1. Delegated-Authority. City may delegate to any other body or Person authority to administer the Franchise and to monitor the performance of Grantee pursuant to the Franchise. Grantee shall cooperate with any such delegates of City.

2. Administration of Franchise. Commission or any designee thereof shall have continuing regulatory jurisdiction and supervision over the System and Grantee's operation under the Franchise. Commission, or its designee, may issue such reasonable rules and regulations concerning the construction, operation and maintenance of the System as are consistent with the provisions of the Franchise and Applicable Law.

3. Franchise Fee.

a. During the term of the Franchise, Grantee shall pay quarterly to City or its delegates a Franchise Fee in an amount equal to five percent (5%) of its quarterly Gross Revenues.

b. Any payments due under this provision shall be payable quarterly. The payments shall be made on April 30th (1st qtr.) July 31st (2nd qtr.) October 31st (3rd qtr.) and January 31st (4th qtr.), together with a report showing the basis for the computation in form and substance substantially the same as Exhibit E attached hereto.

c. All amounts paid shall be subject to audit 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.

4. Not Franchise Fees.

a. Grantee acknowledges and agrees that the Franchise Fees payable by Grantee to City pursuant to this section shall take precedence over all other payments, contributions, services, equipment, facilities, support, resources or other activities to be provided or performed by Grantee pursuant to this Franchise and that the Franchise Fees provided for in this section of the Franchise 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.

b. Grantee shall not apply or seek to apply or make any claim that all or any part of the Franchise Fees or other payments or contributions to be made by Grantee to City pursuant to this Franchise shall be deducted from or credited or offset against any taxes, fees or assessments or general applicability levied or imposed by City or any other governmental authority, including any such tax, fee or assessment imposed on both utilities and cable operators or their services that does not fall within the definition of a franchise fee under 47 U.S.C. § 542.

c. Grantee shall not apply or seek to apply all or any part of any taxes, fees or assessments of general applicability levied or imposed by the City or any other governmental authority (including any such tax, fee or assessment imposed on both utilities and cable operators or their services) that do not fall within the definition of a franchise fee under 47 U.S.C. § 542 as a deduction or other credit from or against any

of the Franchise Fees or other payments or contributions to be paid or made by Grantee to City pursuant to this Franchise which shall be deemed to be separate and distinct obligations of Grantee.

5. Access to Records. City shall have the right to inspect, upon reasonable notice and during Normal Business Hours, or require Grantee to provide within a reasonable time, copies of any records maintained by Grantee which relate to System operations including specifically Grantee's accounting and financial records.

6. Reports and Maps to be Filed with City.

a. Grantee shall prepare and furnish to City, at the times and in the form prescribed, such other reasonable reports with respect to Grantee's operations pursuant to this Franchise as City may require.

b. Subject to reasonable confidentiality protections pursuant to Section 13, Paragraph 8 herein, Grantee shall, if required by Commission, furnish to and file with Commission maps, plats, and permanent records of the location and character of all facilities constructed, including underground facilities, and Grantee shall file with Commission updates of such maps, plats and permanent records annually if changes have been made in the System.

7. Periodic Evaluation.

a. City may require evaluation sessions at any time during the term of this Franchise, but in no event more than once per calendar year, upon thirty (30) days written notice to Grantee.

b. Topics which may be discussed at any evaluation session may include, but are not limited to, application of new technologies, System performance, programming offered, access Channels, facilities and support, municipal uses of cable, subscriber rates, customer complaints, amendments to this Franchise, judicial rulings, FCC rulings, line extension policies and any other topics City deems relevant.

c. As a result of a periodic review or evaluation session, upon notification from City, Grantee shall meet with City and undertake good faith efforts to reach agreement on changes and modifications to the terms and conditions of the Franchise which are both economically and technically feasible.

SECTION 9.

GENERAL FINANCIAL AND INSURANCE PROVISIONS

1. Performance Bond.

a. At the time the Franchise becomes effective and at all times thereafter, City reserves the right to impose on Grantee an obligation to file with Commission, on behalf of all Member Cities, a bond in the amount of \$100,000.00 in a form and with such sureties as reasonably acceptable to Commission. This bond will be conditioned upon the faithful performance by the Grantee of its Franchise obligations and upon the further condition that in the event Grantee shall fail to comply with any law, ordinance or regulation governing the Franchise, there shall be recoverable jointly and severally from the principal and surety of the bond any damages or loss suffered by City as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of 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 City which arise by reason of the construction, operation, or

maintenance of the System. The rights reserved by City with respect to the bond are in addition to all other rights City may have under the Franchise or any other law. City may, from year to year, in its sole discretion, reduce the amount of the bond.

b. The time for Grantee to correct any violation or liability, shall be extended by City if the necessary action to correct such violation or liability is, in the sole determination of City, of such a nature or character as to require more than thirty (30) days within which to perform, provided Grantee provides written notice that it requires more than thirty (30) days to correct such violations or liability, commences the corrective action within the thirty (30) day period and thereafter uses reasonable diligence to correct the violation or liability.

c. In the event this Franchise is revoked by reason of default of Grantee, City shall be entitled to collect from the performance bond that amount which is attributable to any damages sustained by City as a result of said default or revocation.

d. Grantee shall be entitled to the return of the performance bond, or portion thereof, as remains sixty (60) days after the expiration of the term of the Franchise or revocation for default thereof, provided City has not notified Grantee of any actual or potential damages incurred as a result of Grantee's operations pursuant to the Franchise or as a result of said default.

e. The rights reserved to City with respect to the performance bond are in addition to all other rights of 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 City may have.

2. Security Fund.

a. At the time this Franchise becomes effective, Grantee shall deposit into a bank account, established by Commission on behalf of all Member Cities, and maintain on deposit throughout the term of this Franchise, the sum of fifty thousand dollars (\$50,000) as a common security fund for the faithful performance by it of all the provisions of this franchise and all other franchises which combine to make up the System (hereinafter "Security Fund"). In compliance with all orders, permits and directions, of any Member City or Commission and the payment by Grantee of any claim, liens and taxes due City which arise by reason of the construction, operation or maintenance of the System. Interest accrued on this deposit shall be paid to Grantee on a quarterly basis provided that all requirements of this section have been complied with by Grantee. Provisions shall be made to permit the Commission to withdraw funds from the Security Fund. Grantee shall not use the Security Fund for other purposes and shall not assign, pledge, or otherwise use the Security Fund as security for any purpose.

b. In addition to recovery of any monies owed by Grantee to City or any Person or damages to City or any Person as a result of any acts or omissions by Grantee pursuant to the Franchise, City in its sole discretion may charge to and collect from the Security Fund the following penalties:

i. For failure to timely complete System upgrades as provided in this Franchise unless City approves the delay, the penalty shall be \$500.00 per day for each day, or part thereof, such failure occurs or continues.

ii. For failure to provide data, documents, reports or information or to cooperate with

City during an application process or system review or as otherwise provided herein, the penalty shall be \$250.00 per day for each day, or part thereof, such failure occurs or continues.

iii. Fifteen (15) days following notice from City of a failure of Grantee to comply with construction, operation or maintenance standards, the penalty shall be \$500.00 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 PEG access channels and the maintenance and/or replacement of the equipment and other facilities, the penalty shall be \$500.00 per day for each day, or part thereof, such failure occurs or continues.

v. For Grantee's breach of any written contract or agreement with or to City or its designee, the penalty shall be \$500.00 per day for each day, or part thereof, such breach occurs or continues.

vi. For failure to comply with any of the provisions of this Franchise, or other Applicable Laws for which a penalty is not otherwise specifically provided pursuant to this Paragraph c, the penalty shall be \$250.00 per day for each day, or part thereof, such failure occurs or continues.

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

d. Whenever City finds that Grantee has violated one or more terms, conditions or provisions of this Franchise, or for any other violation contemplated in Subparagraph b. above, a written notice shall be given to Grantee informing it of such violation. At any time after thirty (30) days (or such longer reasonable time which, in the sole determination of City, is necessary to cure the alleged violation) following local receipt of notice, provided Grantee remains in violation of one or more terms, conditions or provisions of this Franchise, in the sole opinion of City, City may draw from the Security Fund all penalties and other monies due City from the date of the local receipt of notice.

e. Grantee may, within seven (7) days of receipt of such written notice, 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. City shall hear Grantee's dispute within sixty (60) days and render a final decision within sixty (60) days thereafter. If Grantee does not dispute the alleged violation or upon the determination of City that a violation has taken place, subject to Grantee's right to seek any applicable judicial review, City may draw from the security fund an amount to cover any failure of Grantee to pay penalties accrued but unpaid after seven (7) days written notice of such final determination.

f. If said Security Fund or any subsequent Security Fund delivered pursuant thereto expires prior to thirty (30) months after the expiration of the term of this Franchise, it shall be renewed or replaced during the term of this Franchise to provide that it will not expire earlier than thirty (30) months after the expiration of this Franchise. The renewed or replaced Security Fund shall be of the same form and with a bank authorized herein and for the full amount stated in Paragraph a. of this section.

g. If City draws upon the Security Fund or any subsequent Security Fund 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 Security Fund or certification of replenishment for the full amount stated in Paragraph A of this section as a substitution of the previous Security Fund. This shall be a continuing obligation for any draws upon the Security Fund.

h. If any Security Fund is not so replaced or replenished, City may draw on said Security Fund for the whole amount thereof and use the proceeds as City determines in its sole discretion. The failure to replace or replenish any Security Fund may also, at the option of the City and/or Commission, be deemed a default by Grantee under this Franchise. The drawing on the Security Fund 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.

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

3. Liability Insurance.

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

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

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

iii. Broad form property damage liability shall be afforded.

The following endorsements shall be attached to the liability policy:

i. City shall be listed as an additional insured on the policy.

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

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

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

b. Grantee shall submit to City documentation of the required insurance, including a certificate of insurance signed by the insurance agent and companies named, as well as all properly executed endorsements.

4. Indemnification

a. Grantee shall indemnify, defend and hold City and Commission, its officers,

boards, commissions, agents and employees (collectively the "Indemnified Parties") harmless from and against any and all lawsuits, claims, causes or action, actions, liabilities, demands, damages, judgments, settlements, disability, losses, expenses (including attorney's fees and disbursements of counsel) and costs of any nature that any of the Indemnified Parties may at any time suffer, sustain or incur arising out of, based upon or in any way connected with the Grantee's operations, the exercise of the Franchise, the breach of Grantee of its obligations under this Franchise and/or the activities of Grantee, its subcontractor, employees and agents hereunder. Grantee shall be solely responsible for and shall indemnify, defend and hold the Indemnified Parties harmless from and against any and all matters relative to payment of Grantee's employees, including compliance with Social Security and withholdings.

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

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

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

e. Grantee shall not be required to indemnify City and Commission for negligence or misconduct on the part of the City and the Commission or its officials, boards, commissions, agents, or employees, including any loss claims related to public access channels in which City and/or Commission participate subject to applicable state and federal statutory limitations.

5. Grantee's Insurance.

Grantee shall not commence any Cable System reconstruction work or permit any subcontractor to commence work until all insurance required under this Franchise has been obtained. Said insurance shall be maintained in full force and effect until the expiration of this Franchise.

SECTION 10.

SALE, ABANDONMENT, TRANSFER AND REVOCATION OF FRANCHISE

1- City's Right to Revoke.

a. In addition to all other rights which City has pursuant to law or equity, City reserves the right to commence proceedings to revoke, terminate or cancel this Franchise, and all rights and privileges pertaining thereto, if it is determined by City that:

i. Grantee has violated material provisions(s) of this Franchise; or ii. Grantee has attempted to evade any of the provisions of the Franchise; or iii. Grantee has practiced fraud or deceit upon City.

b. City may revoke this Franchise without the hearing otherwise required herein if Grantee is adjudged a bankrupt.

2. Procedures for Revocation.

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

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

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

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

3. Abandonment of Service. Grantee may not abandon the System or any portion thereof

without having first given three (3) months written notice to City and/or Commission.