

CITY OF SAVAGE, MINNESOTA

ORDINANCE NO.: 831 GRANTING A CABLE TELEVISION  
FRANCHISE

TO  
NUVERA COMMUNICATIONS, INC., F/K/A SCOTT RICE  
TELEPHONE COMPANY D/B/A INTEGRA TELECOM

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

AN ORDINANCE RENEWING THE GRANT OF A CABLE FRANCHISE TO NUVERA COMMUNICATIONS, INC., F/K/A SCOTT RICE TELEPHONE COMPANY D/B/A INTEGRA TELECOM. TO OPERATE AND MAINTAIN A CABLE SYSTEM IN THE CITY OF SAVAGE, MINNESOTA; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE; PROVIDING FOR CITY REGULATION AND ADMINISTRATION OF THE CABLE SYSTEM AND THE PUBLIC RIGHTS-OF-WAY IN CONJUNCTION WITH THE CITY'S RIGHT-OF-WAY ORDINANCE; TERMINATING PRIOR FRANCHISE; AND PRESCRIBING PENALTIES FOR THE VIOLATION OF THE PROVISIONS HEREIN;

**RECITALS**

The City of Savage, Minnesota (“City”), pursuant to applicable federal and state law, is authorized to grant one (1) or more nonexclusive cable television franchises to construct, operate, maintain and reconstruct cable television systems within the City limits.

Nuvera Communications, Inc., a Minnesota corporation (“Grantee”) has operated a Cable System in the City, under a cable television franchise granted pursuant to a Cable Television Franchise Ordinance 663.

Negotiations between Grantee and the City have been completed and the franchise renewal process followed in accordance with the guidelines established by the City Code, Minnesota Statutes Chapter 238 and the Cable Act (47 U.S.C. §546).

The City reviewed the legal, technical and financial qualifications of Grantee and has determined that it is in the best interest of the City and its residents to renew the cable television franchise with Grantee.

**NOW, THEREFORE, THE CITY OF SAVAGE DOES ORDAIN** that a franchise is hereby granted to Nuvera Communications, Inc., to operate and maintain a Cable System in the City upon the following terms and conditions:

**SECTION 1. SHORT TITLE AND DEFINITIONS**

For the purpose of this Franchise, the following, terms, phrases, words, derivations and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular number include the plural number. In the event the meaning of any word or phrase not defined herein is uncertain, the definitions contained in applicable local, state or federal law shall apply. The word "shall" is always mandatory and not merely directory. The word "may" is directory and discretionary and not mandatory.

- 1.1 Short Title. This Franchise Ordinance shall be known and cited as the Cable Franchise Ordinance.
- 1.2 “Access Channels” means any Channel or portion of a Channel utilized for public, educational or governmental programming.

- 1.3 "Actual Cost" means the incremental cost to the Grantee of materials, labor and borrowing necessary to install and construct fiber-optic lines, coaxial cable and/or equipment.
- 1.4 "Advertising Revenues" shall mean revenues derived from sales of advertising that are made available to Grantee's Cable System subscribers within the City and shall be allocated on a pro rata basis using total Cable Service subscribers reached by the advertising. Additionally, Grantee agrees that Gross Revenues subject to franchise fees shall include all commissions, representative fees, Affiliated Entity fees, or rebates paid to Grantee or their successors associated with sales of advertising on the Cable System within the City allocated according to this paragraph using total Cable Service subscribers reached by the advertising.
- 1.5 "Affiliate" shall mean any Person controlling, controlled by or under common control of Grantee. This term includes any Person who owns or controls, or is owned or controlled by, or is under common ownership and control with, Nuvera Communications, Inc.
- 1.6 "Applicable Laws" means any law, statute, charter, ordinance, rule, regulation, code, license, certificate, Franchise, permit, writ, ruling, award, executive order, directive, requirement, injunction (whether temporary, preliminary or permanent), judgment, decree or other order issued, executed, entered or deemed applicable by any governmental authority of competent jurisdiction. It is the intent of this ordinance that Grantee shall be treated in a similar and uniform manner as other occupants of the City's right-of-way.
- 1.7 "Basic Cable Service" shall be defined as set forth in Applicable Law, currently 47 USC § 522(3), as any service tier which includes the lawful retransmission of local television broadcast Channels.
- 1.8 "Cable Act" means the Cable Communications Policy Act of 1984, 47 U.S.C. §§ 521 et seq., as amended by the Cable Television Consumer Protection and Competition Act of 1992, as further amended by the Telecommunications Act of 1996, as further amended from time to time.
- 1.9 "Cable Service" shall be defined as set forth in Applicable Law, currently 47 USC § 522(6), as a) the one-way transmission to Subscribers of (i) Video Programming or (ii) Other Programming Service, and b) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service. For the purposes of this definition, "video programming" is programming provided by, or generally considered comparable to programming provided by a television broadcast station; and, "other programming service" is information that a cable operator makes available to all Subscribers generally.
- 1.10 "Cable System" or "System" shall have the meaning specified for "Cable System" in the Cable Act. Unless otherwise specified, it shall in this document refer to the Cable System constructed and operated in the City under this Franchise.

- 1.11 “Channel” shall be defined as set forth in Applicable Law, currently 47 USC § 522(4), as a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television Channel as defined by the FCC by regulation.
- 1.12 “City” shall mean the City of Savage, a municipal corporation in the State of Minnesota, acting by and through its City Council or its lawfully appointed designee.
- 1.13 “City Code” means the Savage City Code, as may be amended from time to time.
- 1.14 “City Council” or “Council” shall mean the governing body of the City.
- 1.15 “Connection” means the attachment of the Drop to the television set of the Subscriber.
- 1.16 “Converter” means an electronic device, including Digital Transport Adapters, which converts signals to a frequency not susceptible to interference within the television receiver of a Subscriber, and by an appropriate Channel selector also permits a Subscriber to, at minimum, view all signals included in the Basic Cable Service tier delivered at designated Converter dial locations.
- 1.17 “Day” unless otherwise specified shall mean a calendar day.
- 1.18 “Demarcation Point” is the point agreed upon by the Grantee and the City upon which one side is the responsibility of the Grantee, and the other side is the responsibility of the City.
- 1.19 “Drop” shall mean the cable that connects the Subscriber terminal to the nearest feeder cable of the cable.
- 1.20 “Effective Date” shall mean the date this Ordinance is published. The date of publication shall be preceded by execution by the Grantee and approval and execution by the City.
- 1.21 “FCC” means the Federal Communications Commission, or a designated representative.
- 1.22 “Franchise” or “Cable Franchise” shall mean the right granted by this Franchise Ordinance as may be amended from time to time, any exhibits attached hereto and made a part hereof, and conditioned as set forth herein.
- 1.23 “Franchise Area” means the entire geographic area within the City as it is now constituted or may in the future be constituted.
- 1.24 “Franchise Fee” shall mean the fee assessed by the City to Grantee in consideration for Grantee’s right to operate the Cable System within the City’s Rights-of-Way, determined in amount as a percentage of Grantee’s Gross Revenues and limited only by the maximum percentage allowed for such assessment by federal law. The term Franchise Fee does not include the exceptions noted in 47 U.S.C. §542(g)(2)(A-E) or any other Applicable Law.

- 1.25 “GAAP” means generally accepted accounting principles as promulgated and defined by the Financial Accounting Standards Board (“FASB”), Emerging Issues Task Force (“EITF”) and/or the U.S. Securities and Exchange Commission (“SEC”).
- 1.26 "Grantee" means Nuvera Communications, Inc., a Minnesota corporation.
- 1.27 “Gross Revenues” means all revenue derived directly or indirectly by Grantee, its affiliates, subsidiaries, or parent, in which Grantee has financial interest of five percent (5%) or more, from the operation of its System within the City to provide Cable Services. Gross Revenues shall include, but not be limited to, all Cable Service fees, late fees, Installation and reconnection fees, upgrade and downgrade fees, advertising revenue, Converter rental fees and Lockout Device fees. The term Gross Revenue shall not include: (1) any taxes on services furnished by Grantee imposed by any municipality, state, or other governmental unit and collected by Grantee for such governmental unit; nor (2) bad debt, investment income, programming launch support payments, advertising sales commissions and third-party agency fees.
- 1.28 “Installation” means the connection of the System from feeder cable to the point of connection with the Subscriber Converter or other terminal equipment.
- 1.29 “Minnesota Cable Communications Act” means the provisions of Minnesota law governing the requirements for a cable television Franchise as set forth in Minn. Stat. Ch. 238, as may be amended, and as is applicable to this ordinance.
- 1.30 “Normal Business Hours” means those hours during which most similar businesses in the City are open to serve customers. Grantee’s normal business hours are generally from 8:00 a.m. through 5:00 p.m., Monday through Friday with some after-hours services available.
- 1.31 “Normal Operating Conditions” means those service conditions which are within the control of Grantee. Those conditions which are 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 ordinarily 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, maintenance or upgrade of the Cable System.
- 1.32 “Parties” unless otherwise specified herein shall mean the City and Grantee.
- 1.33 “PEG” means public, educational and governmental.
- 1.34 “Person” means any natural person and all domestic and foreign corporations, closely-held corporations, associations, syndicates, joint stock corporations, partnerships of every kind, clubs, businesses, common law trusts, societies and/or any other legal entity.
- 1.35 “Right-of-Way” means the area on, below, or above a public roadway, highway, street, cartway, bicycle lane, and public sidewalk in which the City has an interest, including other dedicated rights-of-way for travel purposes and utility easements of local government units.

A public Right-of-Way does not include the airwaves above a public Right-of-Way with regard to cellular or other non-wire telecommunications or broadcast service.

- 1.36 "Right-of-Way Ordinance" means any ordinance of the City codifying requirements regarding regulation, management and use of Rights-of-Way in the City, including registration, fees, and permitting requirements.
- 1.37 "Standard Installation" means any residential Installation which can be completed using a Drop of one hundred twenty-five (125) feet or less.
- 1.38 "State" means the State of Minnesota, its agencies and departments.
- 1.39 "Subscriber" means a Person who lawfully receives Cable Service.
- 1.40 "Wireline MVPD" means a multichannel video programming distributor that utilizes the Right-of-Ways to install cable or fiber and is engaged in the business of making available for purchase, by Subscribers, multiple Channels of video programming in the City.

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

2.1 **Grant of Franchise.** The City hereby authorizes Grantee to occupy or use the City's Right-of-Ways subject to: 1) the provisions of this non-exclusive Franchise to provide Cable Service within the City; and 2) all applicable provisions of the City Code and Applicable Law. Nothing in this Franchise shall be construed to prohibit Grantee from: 1) providing services other than Cable Services to the extent not prohibited by Applicable Law; or 2) challenging any exercise of the City's legislative or regulatory authority in an appropriate forum. The City hereby reserves all of its rights to regulate such other services to the extent not prohibited by Applicable Law and no provision herein shall be construed to limit or give up any right to regulate.

### **2.2 Reservation of Authority.**

(a) This Franchise does not confer any rights other than as expressly provided herein, or as provided by federal, State or local law. No privilege or power of eminent domain is bestowed by this Franchise or grant. The Grantee specifically agrees to comply with the lawful provisions of the City Code, applicable regulations of the City and Applicable Law. Subject to the police power exception below, in the event of a conflict between A) the lawful provisions of the City Code or applicable regulations of the City and B) this Franchise, the express provisions of this Franchise shall govern. Subject to express federal and state preemption, the material terms and conditions contained in this Franchise may not be unilaterally altered by the City through subsequent amendments to the City Code, ordinances or any regulation of City, except in the lawful exercise of City's police power. Grantee acknowledges that the City may modify its regulatory policies by lawful exercise of the City's police powers throughout the term of this Franchise. Grantee agrees to comply with such lawful modifications to the City Code; however, Grantee reserves all rights it may have to challenge such modifications to the City Code whether arising in contract or at law. The City reserves all of its rights and defenses to such challenges whether arising in contract or at law. Nothing in this

Franchise shall A) abrogate the right of the City to perform any public works or public improvements of any description, B) be construed as a waiver of any codes or ordinances of general applicability promulgated by the City, or C) be construed as a waiver or release of the rights of the City in and to the Right-of-Ways.

(b) Notwithstanding the above grant to use Rights-of-Way, no Right-of-Way shall be used by the Grantee if the City determines that such use is inconsistent with the terms, conditions, or provisions by which such Right-of-Way was created or dedicated.

(c) This Franchise authorizes only the use of Rights-of-Way for the operation of a System. Therefore, the grant of this Franchise and the payment of Franchise Fees hereunder shall not exempt the Grantee from the obligation to pay compensation or fees for the use of City property, both real and personal, other than the Rights-of-Way, provided, however, that such compensation or fees are required by City ordinance, regulation or policy and are non-discriminatory.

2.3 **Lease or Assignment Prohibited.** No Person may lease Grantee's System for the purpose of providing Cable Service until and unless such person shall have first obtained and shall currently hold a valid Franchise or other lawful authorization containing substantially similar burdens and obligations to this Franchise, including, without limitation, a requirement on such Person to pay Franchise Fees on such Person's use of the System to provide Cable Services, to the extent there would be such a requirement under this Franchise if the Grantee itself were to use the System to provide such Cable Service. Any assignment of rights under this Franchise shall be subject to and in accordance with the requirements of this Franchise.

2.4 **Franchise Term.** The term of the Franchise shall be ten (10) years from the Effective Date, unless extended by mutual written consent or terminated sooner in accordance with this Franchise.

2.5 **Franchise Area.** This Franchise is granted for the Franchise Area; provided, however, that in accordance with Minnesota Statutes Section 238.08(c), Grantee may, but is not required to, extend plant to areas of the City outside of the area which Grantee provides local exchange telephone service ("Initial Service Area"). (A) Grantee shall extend plant to all areas of the Initial Service Area and any future areas of the City where its plant is located where the density reaches or exceeds seven (7) homes per 1/2 linear strand mile of cable as measured from the nearest Tap required to deliver a signal that complies with the FCC Technical Standards. (B) After service has been established by activating trunk and/or distribution cables for any portion of the Franchise Area, Grantee shall provide Cable Service to any requesting residential or commercial Subscriber within that Franchise Area within thirty (30) days from the date of request, provided that: (1) the Grantee will meet FCC technical standards in providing such Cable Service (2) the Grantee is able to secure access to all rights-of-way necessary to extend Service to such Subscriber within such thirty (30) day period on reasonable terms and conditions; and (3) such residence is located within 125 feet of Grantee's feeder cable. No Subscriber shall be refused service arbitrarily. (c) Grantee shall bury all Drops to Subscribers' dwellings when required by local construction standards as soon as reasonably possible. In the event the ground is frozen or otherwise unsuitable to permit immediate burial, Grantee shall be permitted to delay such burial



until the ground becomes suitable for burial and shall complete said burial no later than June 1st of each year.

2.6 **Franchise Nonexclusive.** The Franchise granted herein shall be nonexclusive. The City specifically reserves the right to grant, at any time, such additional franchises for a Cable System as it deems appropriate provided, however, such additional grants shall not operate to materially modify, revoke, or terminate any rights previously granted to Grantee other than as described herein. The grant of any additional franchise shall not of itself be deemed to constitute a modification, revocation, or termination of rights previously granted to Grantee. Any additional cable franchise grants shall comply with Minn. Stat. § 238.08 and any other applicable federal level playing field requirements.

2.7 **Previous Franchises.** As of the Effective Date, this Franchise shall supersede and replace any previous Ordinance, as amended, of the City granting a Franchise to Grantee, including any agreement(s) of the parties related thereto, except the Grantee shall continue to be bound by any previously accrued but unfulfilled obligations under Ordinance No. 663 (the “Prior Franchise”) for which the Grantee had notice. The Grantee shall remain liable for payments of all Franchise Fees and other amounts owed, and for all unfulfilled actions that the Grantee was notified of and required to take under the Prior Franchise up to the Effective Date of this Franchise. The grant of this Franchise shall have no effect on the Grantee's duty under the Prior Franchise to indemnify or insure the City against acts and omissions occurring during the period that the Prior Franchise was in effect.

2.8 **Periodic Public Review of Franchise.** No more than once every two (2) years, the City may conduct a public review of the Franchise. The purpose of any such review shall be to ensure, with the benefit of full opportunity for public comment, that the Grantee continues to effectively serve the public in the light of new developments in cable law and regulation, cable technology, cable company performance with the requirements of this Franchise, local regulatory environment, community needs and interests, and other such factors. The City shall notify Grantee of the public review and Grantee may participate in the review process. The review shall not operate to modify or change any provision of this Franchise without mutual written consent in accordance with this Franchise.

2.9 **Compliance with Federal, State and Local Laws.**

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

(b) In the event that federal or State laws, rules or regulations preempt a provision or limit the enforceability of a provision of this Franchise, the provision shall be read to be preempted to the extent and for the time, but only to the extent and for the time, required

or necessitated by law. In the event such federal or State law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the City.

(c) If any term, condition or provision of this Franchise or the application thereof to any Person or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition or provision to Persons or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Franchise and all the terms, provisions and conditions hereof shall, in all other respects, continue to be effective and complied with provided the loss of the invalid or unenforceable clause does not substantially alter the agreement between the parties. In the event such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision which had been held invalid or modified is no longer in conflict with the law, rules and regulations then in effect, said provision shall thereupon return to full force and effect and shall thereafter be binding on Grantee and City.

(d) Grantee shall at all times during the term of this Franchise be subject to the lawful exercise of the police powers of the City, and the City's right to adopt and enforce additional generally applicable ordinances and regulations, and lawful and applicable zoning, building, permitting and safety ordinances and regulations. The grant of this Franchise does not relieve the Grantee of its obligations to obtain any generally applicable licenses, permits or other authority as may be required by the City Code, as it may be amended, for the privilege of operating a business within the City or for performing work on City property or within the Rights-of-Way, to the extent not inconsistent with this Franchise. Except as provided below, any modification or amendment to this Franchise, or the rights or obligations contained herein, must be within the lawful exercise of the City's police powers, as enumerated above, in which case the provision(s) modified or amended herein shall be specifically referenced in an ordinance of the City authorizing such amendment or modification. This Franchise may also be modified or amended with the written consent of the Grantee as provided in herein.

(e) The Grantee shall comply with the terms of the Right-of-Way Ordinance addressing usage of the Rights-of-Way within the City. In the event of any conflict between this Franchise and the Right-of-Way Ordinance, the conflicting terms in this Franchise shall be superseded and the Right-of-Way Ordinance shall control, provided that the Grantee shall not be subject to additional burdens with respect to usage of Rights-of-Way that exceed those imposed on similarly situated Right-of-Way users. Nothing in the Franchise prohibits Grantee from challenging the lawfulness of the Ordinance.

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

## 2.10 **Transfer of Ownership.**

(a) No sale, transfer, assignment or “fundamental corporate change,” as defined in Minn. Stat. § 238.083, of this Franchise shall take place until the parties to the sale, transfer, or fundamental corporate change files a written request with City for its approval, 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) City may determine that a public hearing is necessary due to potential adverse effect on Grantee’s Subscribers resulting from the sale or transfer.

(c) If a public hearing is deemed necessary pursuant to (b) above, such hearing shall be commenced within thirty (30) Days of such determination and notice of any such hearing shall be given in accordance with local law. The notice shall contain the date, time and place of the hearing and shall briefly state the substance of the action to be considered by City.

(d) City shall approve or deny in writing the sale or transfer request. City shall set forth in writing with particularity its reason(s) for denying approval. City shall not unreasonably withhold its approval.

(e) The Grantee shall file, in addition to all documents, forms and information required to be filed by Applicable Law, documents or information related to the transaction as may be specifically and reasonably requested by the City.

(f) The City shall have such time as is permitted by federal law in which to review a transfer request.

(g) In no event shall a transfer or assignment of ownership or control be approved without the transferee becoming a signatory to this Franchise and assuming all rights and obligations thereunder, and assuming all other rights and obligations of the transferor to the City.

(h) In accordance with Minn. Stat. § 238.084, Subd. 1(y), the City shall have the right to purchase the System in the event the Franchise or System is proposed to be transferred or sold on the same terms and conditions as the offer pursuant to which transfer notice was provided pursuant to this Section. The City shall have thirty (30) Days from receipt of an application for consent under this Section in which to give notice of its intention to exercise such right.

(i) No Franchise may be transferred if the City determines the Grantee is in noncompliance of the Franchise unless an acceptable compliance program has been approved by City. The approval of any transfer of ownership pursuant to this Section shall not be deemed to waive any rights of City to subsequently enforce noncompliance issues relating to this Franchise.

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

2.11 **Foreclosure.** Upon the foreclosure or other judicial sale of the Cable System, Grantee shall notify the City of such fact and such notification shall be treated as a notification that a change in control of Grantee has taken place, and the provisions of this Franchise governing the consent to transfer or change in ownership shall apply without regard to how such transfer or change in ownership occurred.

2.12 **Receivership.** The City shall have the right to cancel this Franchise subject to any applicable provisions of state law, including the Bankruptcy Act, one hundred twenty (120) Days after the appointment of a receiver or trustee to take over and conduct the business of Grantee, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) Days, or unless:

(a) Within one hundred twenty (120) Days after his election or appointment, such receiver or trustee shall have fully complied with all the provisions of this Franchise and remedied all defaults thereunder; and,

(b) Such receiver or trustee, within said one hundred twenty (120) Days, shall have executed an agreement, duly approved by the Court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Franchise.

2.13 **Expiration.** Upon expiration of the Franchise, the City may, subject to Grantee's rights under Section 626 of the Cable Act:

(a) extend the Franchise, though nothing in this provision shall be construed to require such extension;

(b) renew the Franchise, in accordance with Applicable Laws;

(c) invite additional franchise applications or proposals;

(d) terminate the Franchise subject to any rights Grantee has under Section 626 of the Cable Act; or

(e) take such other action as is compliant with Applicable Law.

2.14 **Right to Require Removal of Property.** At the expiration of the term for which the Franchise is granted provided no extension or renewal is granted, or upon its forfeiture or revocation as provided for herein, the City shall have the right to require Grantee to (i) remove at Grantee's own expense all or any part of the Cable System from all Right-of-Ways and public ways within the Franchise Area; and (ii) to restore affected sites to their original condition within a reasonable time. If Grantee fails to do so, the City may perform the work and collect the cost

thereof from Grantee. The City shall not be liable to the Grantee for damages resulting from such removal, alteration or relocation. However, Grantee shall have no obligation to remove the Cable System where it utilizes the system to provide other non-cable services and has any other authority under Applicable Law to maintain facilitates in the public rights-of-way, or where Grantee is able to find a purchaser of the Cable System who holds such authorization.

**2.15 Continuity of Service Mandatory.** It shall be the right of all Subscribers to receive all available services insofar as their financial and other obligations to Grantee are honored. In the event that Grantee elects to overbuild, rebuild, modify, or sell the system, or the City revokes or fails to renew the Franchise, Grantee shall make its best effort to ensure that all Subscribers receive continuous uninterrupted service, regardless of the circumstances, while the Franchise remains effective. In the event of expiration, purchase, lease-purchase, condemnation, acquisition, taking over or holding of plant and equipment, sale, lease, or other transfer to any other Person, including any other grantee of a cable communications Franchise, the current Grantee shall cooperate fully to operate the system in accordance with the terms and conditions of this Franchise for a temporary period sufficient in length to maintain continuity of service to all Subscribers.

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

If to City:

City of Savage  
Savage City Hall  
6000 McColl Drive  
Savage, Minnesota, 55378  
Attention: Communications Director

If to Grantee:

Nuvera Communications, Inc.  
  
27 N. Minnesota St.,  
  
New Ulm, MN56073  
  
Attn: Regulatory Department

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

### **SECTION 3. OPERATION IN STREETS AND RIGHTS-OF-WAY**

#### **3.1 Use of Rights-of-Way.**

(a) Grantee may, subject to the terms of this Franchise, the City Code and Right-of-Way Ordinance, and other Applicable Law erect, install, construct, repair, replace, reconstruct and retain in, on, over, under, upon, across and along the Right-of-Ways within the City such lines, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of a Cable System within the City. Without limiting the foregoing, Grantee expressly agrees that it will construct, operate and maintain its Cable System in compliance with, and subject to, the requirements of the City Code and Applicable Law, including by way of example and not limitation, those requirements governing the placement of Grantee's Cable System; and with other applicable City Codes and Laws, and will obtain and maintain all permits and bonds required by the City Code and Applicable Law in addition to those required in this Franchise.

(b) All wires, conduits, cable and other property and facilities of Grantee shall be so located, constructed, installed and maintained as not to endanger or unnecessarily interfere with the usual and customary trade, traffic and travel upon, or other use of the Right-of-Ways of City. Grantee shall keep and maintain all of its property in good condition, order and repair so that the same shall not menace or endanger the life or property of any Person. Grantee shall keep accurate maps and records of all of its wires, conduits, cables and other property and facilities located, constructed and maintained in the City.

(c) All wires, conduits, cables and other property and facilities of Grantee, shall be constructed and installed in an orderly and professional manner. All wires, conduits and cables shall be installed, where possible, parallel with electric and telephone lines. Multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering considerations.

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

### **3.2 Construction or Alteration.**

(a) Grantee shall in all cases comply with the Right-of-Way Ordinance and other Applicable Law regarding the acquisition of permits and/or such other items as may be reasonably required in order to construct, alter or maintain the Cable System. Grantee shall, upon request, provide information to the City regarding its progress in completing or altering the Cable System.

(b) No poles, towers, conduits, amplifier boxes, pedestal mounted terminal boxes, similar structures, or other wire-holding structures shall be erected or installed by the Grantee without obtaining any required permit or other authorization from the City, and shall be compliant with the Right-of-Way Ordinance and other Applicable Law.

(c) No placement of any pole or wire-holding structure of the Grantee is to be considered a vested fee interest in the Rights-of-Way or in City property.

(d) Where existing poles, underground conduits, ducts or wire-holding structures are available for use by the Grantee, but it does not make arrangements for such use, the City may require, through the established permit, or any other applicable procedure, the Grantee to use such existing poles and wire-holding structures if the City determines that the public convenience would be enhanced thereby and the terms available to the Grantee for the use of such poles and structures are just and reasonable.

### 3.3 **Non-Interference.**

(a) Grantee shall construct and maintain a Cable System so as not to interfere with other use of Right-of-Ways. Grantee shall, where possible in the case of above ground lines, make use of existing poles and other facilities available to Grantee.

(b) The Grantee shall not place poles, conduits, or other fixtures of the System above or below ground where the same will interfere with any gas, electric, telephone, water or other utility fixtures and all such poles, conduits, or other fixtures placed in any Right-of-Way shall be so placed as to comply with all lawful requirements of the City.

(c) When residents receiving underground service will be affected by proposed construction or alteration, Grantee shall provide such notice as set forth in the permit or in City Code of the same to such affected residents.

3.4 **Consistency with Designated Use.** Notwithstanding the above grant to use Right-of-Ways, no Right-of-Way shall be used by Grantee if the City, in its reasonable opinion, determines that such use is inconsistent with the terms, conditions or provisions by which such Right-of-Way was created or dedicated, or presently used under Applicable Laws.

### 3.5 **Undergrounding.**

(a) In no case may the Grantee install poles in areas of the City where underground facilities are generally used by the utilities already operating. Grantee shall place underground all of its transmission lines which are located or are to be located above or within the Right-of-Ways of the City in the following cases:

- i. all other existing utilities are required to be placed underground by statute, resolution, policy or other Applicable Law;
- ii. Grantee is unable to get pole clearance;
- iii. underground easements are obtained from developers of new residential areas; or
- iv. utilities are overhead but residents prefer underground (undergrounding provided at cost paid by benefitted residents).

(b) If an ordinance is passed which involves placing underground certain utilities including Grantee's cable plant which is then located overhead, Grantee shall participate in such underground project and shall remove poles, cables and overhead wires if requested to do so and place facilities underground, provided that Grantee is treated similarly to all other providers within the affected Rights of Way. Nothing herein shall mandate that City provide reimbursement to Grantee for the costs of such relocation and removal, and the Grantee shall not seek damages from the City for such compliance. However, if the City makes available funds for the cost of placing facilities underground, nothing herein shall preclude the Grantee from participating in such funding to the extent consistent with the City Code or Applicable Laws.

(c) Grantee shall use conduit or its functional equivalent to the greatest extent possible for undergrounding, except for Drops from pedestals to Subscribers' homes and for cable on other private property where the owner requests that conduit not be used. Cable and conduit shall be utilized which meets the highest industry standards for electronic performance and resistance to interference or damage from environmental factors. Grantee shall use its best efforts to, in conjunction with other utility companies or providers, use common trenches for underground construction wherever available.

### **3.6 Maintenance and Restoration.**

(a) Restoration. Any Rights-of-Way, or any sewer, gas or water main or pipe, drainage facility, electric, fire alarm, police communication or traffic control facility of the City, or any other public or private property, which is disturbed, damaged or destroyed during the construction, repair, replacement, relocation, operation, maintenance, expansion, extension or reconstruction of the System shall be promptly and fully restored, replaced, reconstructed or repaired by the Grantee, at its expense, to the same or better condition as that prevailing prior to the Grantee's work, to the extent consistent with the Right-of-Way Ordinance and other Applicable Law. It is agreed that in the normal course, with respect to fire and police department facilities and equipment, and water and sewer facilities, and other essential utilities and services, as determined by the City, such restoration, reconstruction, replacement or repairs shall be commenced immediately after the damage, disturbance or destruction is incurred, and the Grantee shall take diligent steps to complete the same, unless an extension of time is obtained from the appropriate City agency or department. All requirements of this Section pertaining to public property shall also apply to the restoration of private easements and other private property. Grantee shall perform all restoration work within a reasonable time and with due regard to seasonal working conditions in accordance with the Right-of-Way Ordinance and other Applicable Law, and within a period not to exceed ninety (90) days. If Grantee fails, neglects or refuses to make restorations as required under this Section, then the City may do such work or cause it to be done, and the cost thereof to the City shall be paid by Grantee in accordance with the Right-of-Way Ordinance and other Applicable Law. If Grantee causes any damage to private property in the process of restoring facilities, Grantee shall repair such damage.

(b) Maintenance. Grantee shall maintain all above ground improvements that it places on City Right-of-Way pursuant to Applicable Law, City Code and any permit issued by the City. In order to avoid interference with the City's ability to maintain the Right-of-Way,



Grantee shall provide such clearance as is required by the City Code and any permit issued by the City. If Grantee fails to comply with this provision, and by its failure, property is damaged, Grantee shall be responsible for all damages caused thereby.

(c) **Disputes.** In any dispute over the adequacy of restoration or maintenance relative to this Section, final determination shall be the prerogative of the City, Department of Public Works and consistent with Applicable Law, the City Code and any permit issued by the City.

**3.7 Tree Trimming.** Grantee shall have the authority, pursuant to the City Code and after obtaining required permits from the City or other appropriate authority, to trim trees and shrubs in the Public Rights-of-Way to the extent Grantee finds necessary to avoid interference with the proper construction, operation, repair and maintenance of the Grantee's Cable System, except that at the option of the City, such trimming may be done by it or under its supervision and direction at the reasonable expense of Grantee. However, in the exercise of this right, the Grantee agrees not to cut or otherwise injure said trees to any greater extent than is reasonably necessary. This Franchise does not give the Grantee any authority to remove trees on private property in the City. All trimming shall be performed at the sole cost of the Grantee.

**3.8 Relocation.**

(a) **Public Property.** Grantee shall relocate its System and facilities in accordance with the City Code. In addition, if, during the term of the Franchise, the City or any government entity elects or requires a third party to alter, repair, realign, abandon, improve, vacate, reroute or change the grade of any Right-of-Way, public Right-of-Way or other public property; or to construct, maintain or repair any public improvement; or to replace, repair install, maintain, or otherwise alter any cable, wire conduit, pipe, line, pole, wire-holding structure, structure, or other facility, including a facility used for the provision of utility or other services or transportation of drainage, sewage or other liquids, for any public purpose, Grantee shall, upon request, except as otherwise hereinafter provided, at its sole expense remove or relocate as necessary its poles, wires, cables, underground conduits, vaults, pedestals, manholes and any other facilities which it has installed, provided that Grantee is treated similarly to other franchisee or utilities within the affected Rights of Way. Nothing herein shall mandate that City provide reimbursement to Grantee for the costs of such relocation and removal and the grantee shall not seek damages from the City for such compliance. However, if the City makes available funds for the cost of placing facilities underground, nothing herein shall preclude the Grantee from participating in such funding to the extent consistent with the City Code or Applicable Laws.

(b) **Utilities and Other Franchisees.** If, during the term of the Franchise, another entity which holds a franchise or any utility requests Grantee to remove or relocate such facilities to accommodate the construction, maintenance or repair of the requesting party's facilities, or their more efficient use, or to "make ready" the requesting party's facilities for use by others, or because Grantee is using a facility which the requesting party has a right or duty to remove, Grantee shall do so. The entity holding the franchise or utility requesting the removal or relocation of such facilities of Grantee shall bear the cost of removal or

relocation, pursuant to City Code, and provided that the City shall not be liable for such costs.

(c) Notice to Remove or Relocate. Any Person requesting Grantee to remove or relocate its facilities shall give Grantee no less than thirty (30) Days' advance written notice to Grantee advising Grantee of the date or dates removal or relocation is to be undertaken; provided, that no advance written notice shall be required in emergencies or in cases where public health and safety or property is endangered. If multiple responsible parties are involved, the City may resolve disputes as to the responsibility for costs associated with the removal, relaying or relocation of facilities among entities authorized to install facilities in the Rights-of-Way if the parties are unable to do so themselves, and if the matter is not governed by a valid contract between the parties or any State or federal law or regulation.

(d) In the event that the System creates or is contributing to an imminent danger to health, safety or property, as reasonably determined by the City, the City, after providing notice to the Grantee, if it is reasonably feasible to do so, may remove or relocate any or all, parts of the System at no expense to the City, other than the City's costs to act on such determination.

(e) Failure by Grantee to Remove or Relocate. If Grantee fails, neglects or refuses to remove or relocate its facilities as directed by the City; or in emergencies or where public health and safety or property is endangered, the City may do such work or cause it to be done, and the cost thereof to the City shall be paid by Grantee. If Grantee fails, neglects or refuses to remove or relocate its facilities as directed by another franchisee or utility, that franchisee or utility may do such work or cause it to be done, and if Grantee would have been liable for the cost of performing such work, the cost thereof to the party performing the work or having the work performed shall be paid by Grantee.

(f) Procedure for Removal of Cable. Grantee shall not remove any underground cable or conduit which requires trenching or other opening of the Right-of-Ways along the extension of cable to be removed, except as hereinafter provided. Grantee may remove any underground cable from the Right-of-Ways which has been installed in such a manner that it can be removed without trenching or other opening of the Right-of-Ways along the extension of cable to be removed. Subject to Applicable Law, Grantee shall remove, at its sole cost and expense, any underground cable or conduit by trenching or opening of the Right-of-Ways along the extension thereof or otherwise which is ordered to be removed by the City based upon a determination, in the reasonable discretion of the City, that removal is required in order to eliminate or prevent a hazardous condition. Underground cable and conduit in the Right-of-Ways which is not removed shall be deemed abandoned and title thereto shall be vested in the City. Any effected property shall be promptly and fully restored, replaced, reconstructed or repaired by the Grantee, at its expense, to the same or better condition as that prevailing prior to the Grantee's work, to the extent consistent with applicable statutes and rules.

(g) Movement of Buildings. Grantee shall, upon request by any Person holding an applicable permit, franchise or other approval issued by the City, temporarily remove, raise or lower its wire to permit the movement of buildings. The expense of such removal, raising or lowering shall be paid by the Person requesting same, (except in the case where the

requesting Person is the City for the purpose of moving a City-owned building, in which case no payment shall be required) and Grantee shall be authorized to require such payment in advance. The City shall require all building movers to provide not less than thirty (30) Days' notice to the cable company to arrange for such temporary wire changes.

**3.9 System Construction and Equipment Standards.** The Cable System shall be installed and maintained in accordance with standard good engineering practices and shall conform, when applicable, with the National Electrical Safety Code, the National Electrical Code and the FCC's Rules and Regulations.

**3.10 System Maps and Layout.** Grantee shall maintain complete and accurate System maps, which shall include trunks, distribution lines, and nodes. Such maps shall include up-to-date route maps showing the location of the Cable System adjacent to the Right-of-Ways. Grantee shall make all maps available for review by the appropriate City personnel.

**3.11 Contractors and Subcontractors.** Any contractor or subcontractor used for work or construction, Installation, operation, maintenance or repair of Grantee's Cable System must be properly licensed under the laws of the State of Minnesota and in accordance with all applicable local ordinances. Each contractor or subcontractor shall have the same obligations with respect to its work as Grantee would have if the work were performed by Grantee. Grantee shall employ contractors, subcontractors and employees to perform work for it who are trained and experienced in their duties. Grantee shall be responsible for ensuring that the work performed is consistent with the obligations of this Franchise and Applicable Laws, regulations, policies and procedures, and shall be responsible for promptly correcting acts, as necessary, or omissions by any contractor or subcontractor. A contractor or subcontractor shall be required to carry the same insurance coverage as may be required of the Grantee.

**3.12 Right-of-Way Meetings.** Grantee will regularly attend and participate in meetings of the City, of which the Grantee is made aware, regarding Rights-of-Way, joint trenching and boring and other issues that may impact the Cable System. City shall provide notice to Grantee at least fourteen (14) days in advance of any such meeting.

**3.13 Main Roads and Right-of-Ways.** Grantee shall not unduly create traffic congestion on main roads and Right-of-Ways due to construction or maintenance of the Cable System. Construction and maintenance shall be scheduled around morning and evening rush hours when practicable. In the event that construction or maintenance must be conducted during such times and at such places, the Grantee shall notify the appropriate City agency or department. The City may deny Grantee's use of said Right-of-Ways and roadways during said periods.

**3.14 Stop Work.**

(a) On notice from the City that any work is being performed contrary to the provisions of this Franchise, or in an unsafe or dangerous manner as determined by the City, or in violation of the terms of any applicable permit, laws, regulations, ordinances, or standards, the work may immediately be stopped by the City.

(b) The stop work order shall:

- i. Be in writing;
- ii. Be given to the Person doing the work, or posted on the work site;
- iii. Be sent to Grantee;
- iv. Indicate the nature of the alleged violation or unsafe condition; and
- v. Establish conditions under which work may be resumed.

### 3.15 Safety Requirements

(a) All applicable safety practices required by law shall be used during construction, maintenance and repair of the System. The Grantee agrees, at all times, to employ ordinary and reasonable care and to install and maintain in use commonly accepted methods and devices for preventing failures and accidents that are likely to cause damage or injuries to the public or to property. All structures and all lines, equipment and connections in the Rights-of-Way shall at all times be kept and maintained in a safe condition, consistent with applicable safety codes.

(b) The Grantee's construction, operation or maintenance of the System shall be conducted in such a manner as not to interfere with City communications technologies related to the health, safety and welfare of City residents.

(c) The Grantee shall be a member of the One Call Notification System (otherwise known as "Gopher State One Call") or its successor, and shall field mark the locations of its underground facilities upon request. Throughout the term of this Franchise, the Grantee shall identify the location of its facilities for the City at its reasonable request at no charge to the City.

(d) Grantee shall implement traffic control measures in the area of the work and shall use traffic control procedures pursuant to the City's Right-of-Way Ordinance.

## SECTION 4. REMOVAL OR ABANDONMENT OF SYSTEM

4.1 **Removal of Cable System.** In the event that: (1) the use of the Cable System is discontinued for any reason for a continuous period of twelve (12) months; or (2) the Cable System has been installed in a Right-of-Way without complying with the requirements of this Franchise, provided notice has been given to Grantee and Grantee has failed to cure any non-complying use, Grantee, at its expense shall, at the demand of the City remove promptly from the Right-of-Ways all of the aerial portion of the Cable System other than any which the City may permit to be abandoned in place. In the event of any such removal Grantee shall promptly restore the Right-of-Way to the same or better condition to its prior condition from which the System has been removed. However, Grantee shall have no obligation to remove the Cable System where it utilizes the System to provide other non-cable services and has any other authority under Applicable Law to maintain facilities in the public rights-of-way, or where Grantee is able to find a purchaser of the Cable System who holds such authorization.

4.2 **Abandonment of Cable System.** In the event of Grantee's abandonment of the Cable System, City shall have the right to require Grantee to conform to the state Right-of-Way rules, Minn. Rules, Chapter 7819. The Cable System to be abandoned in place shall be abandoned in the manner prescribed by the City. Grantee may not abandon any portion of the System without having first given three (3) months written notice to the City. Grantee may not abandon any portion of the System without compensating the City for damages resulting from the abandonment. If Grantee abandons its facilities, the City may choose to use such facilities for any purpose.

4.3 **Removal after Abandonment or Termination.** If Grantee has failed to commence removal of System, or such part thereof as was designated by City, within thirty (30) days after written notice of City's demand for removal consistent with Minn. Rules, Ch. 7819, is given, or if Grantee has failed to complete such removal within twelve (12) months after written notice of City's demand for removal is given, 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 Cable System to be in City with all rights of ownership including, but not limited to, the right to operate the Cable System or transfer the Cable System to another for operation by it.

4.4 **City Options for Failure to Remove Cable System.** If Grantee has failed to complete such removal within the time given after written notice of the City's demand for removal is given, the City shall have the right to exercise one of the following options:

- (a) Declare all right, title and interest to the System to be in the City or its designee 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; or
- (b) Declare the System abandoned and cause the System, or such part thereof as the City shall designate, to be removed at no cost to the City. The cost of said removal shall be recoverable from the security fund, indemnity and penalty section provided for in this Franchise or from Grantee directly.
- (c) Upon termination of service to any Subscriber, Grantee shall promptly remove all its facilities and equipment from within the dwelling of a Subscriber who owns such dwelling upon his or her written request, except as provided by Applicable Law. Such Subscribers shall be responsible for any costs incurred by Grantee in removing the facilities and equipment.

## **SECTION 5. SYSTEM DESIGN AND CAPACITY**

5.1 **Availability of Signals and Equipment.** The System shall be constructed and maintained to have at least the following characteristics:

- (a) Fiber to the node architecture, with Fiber Optic cable deployed from Grantee's Headend to Grantee's Fiber nodes, tying into Grantee's Cable System serving Subscribers. The System is currently passing a minimum of 750 MHz (with a minimum passband of between 50 and 750 MHz) and shall be capable of providing to Subscribers at least 200 or more activated minimum downstream video Channels, or such comparable video viewing capability as is provided in light of developing technologies and video distribution

practices in the future. For the avoidance of doubt, Grantee's System meets these characteristics as of the date of this Ordinance.

(b) The entire System shall conform to or exceed all applicable FCC technical performance standards, as amended from time to time, which standards are incorporated herein by reference, and any other applicable technical performance standards including any FCC regulations regarding carriage of digital, HDTV and any successor format transmissions. End of the line performance must meet or exceed FCC specifications at the end of the Subscriber Drop;

(c) System architecture that permits System Upgrade and other improvements necessary for a modern, high-quality System and reliable service throughout the Franchise term, and the capability to operate continuously on a twenty-four hour a Day basis without severe material degradation during operating conditions typical to the Minneapolis/St. Paul metropolitan area;

(d) Such facilities and equipment as necessary to maintain, operate, evaluate and cure violations of the Grantee's System for compliance with FCC technical and customer service standards, as may be amended, and the standards of this Franchise;

(e) All facilities and equipment required to properly test the System and conduct an ongoing and active program of preventative maintenance and quality control, and to be able to quickly respond to customer complaints and resolve System problems;

(f) Facilities and equipment at the headend allowing the Grantee to transmit or cablecast signals in substantially the form received, without substantial alteration or deterioration.

(g) Facilities and equipment capable of operating within the temperature ranges typical to the climate of the Savage area over the calendar year;

(h) Antenna supporting structures designed in accordance with any applicable governmental building codes, as amended, and painted, lighted and erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration, the FCC and all other applicable codes and regulations;

(i) All facilities and equipment designed, built and operated in such a manner as to protect the safety of Grantee's Cable System workers and the public;

(j) Sufficient trucks, tools, testing equipment, monitoring devices, and other equipment and facilities and trained and skilled personnel required to enable Grantee to substantially comply with Applicable Law, including applicable customer service requirements and including requirements for responding to Cable System outages;

(l) Grantee agrees to maintain the Cable System in a manner consistent with, or in excess of the specifications in Section 5.1 (a-l) throughout the term of the Franchise with sufficient capability and technical quality to enable the implementation and performance of all the requirements of this Franchise, including the Exhibits hereto, and in a manner

which meets or exceeds FCC technical quality standards at 47 C.F.R. § 76 Subpart K, regardless of the particular format in which a Signal is transmitted.

5.2 **Non-Discrimination.** Grantee shall not discriminate in the provision of Cable Service throughout the City to the extent required by Applicable Law.

5.3 **System Specifications.**

(a) **System Maintenance.** In all its construction and service provision activities, Grantee shall meet or exceed the construction, technical performance, extension and service requirements set forth in this Franchise and in a manner which meets or exceeds applicable FCC technical quality standards at 47 C.F.R § 76 Subpart K, regardless of the particular format in which a signal is transmitted.

(b) **Emergency Alert Capability.** 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 insofar as the City's process is consistent with the Minnesota State Emergency Statewide Plan ("EAS Plan"). The City may also develop a local plan containing methods of EAS message distribution, insofar as the local plan is consistent with Applicable Laws and the EAS Plan.

(c) **Technical Standards.** The technical standards used in the operation of the Cable System shall comply, at minimum, with the technical standards promulgated by the FCC relating to Cable Systems pursuant to Title 47, Section 76, Subpart K of the Code of Federal Regulations, as may be amended or modified from time to time, which regulations are expressly incorporated herein by reference. The Cable System shall be installed and maintained in accordance with standard good engineering practices and shall conform with the National Electrical Safety Code, National Electrical Safety Code, City Code and all other Applicable Laws governing the construction of the Cable System, all amended from time to time.

(d) **Parental Control.** The Grantee shall provide adequate capabilities to Subscribers to permit parental control over the use of Grantee's Cable Service. The Grantee, however, shall bear no responsibility for the exercise of parental controls and shall incur no liability for any Subscriber's or viewer's exercise or failure to exercise such controls.

5.4 **Performance Testing.** Grantee shall, at no cost to the City, perform (1) all System tests at the intervals required by the FCC, and (2) all other tests reasonably necessary to determine compliance with technical standards required by this Franchise. Written records of all System test results performed by or for Grantee shall be maintained and shall be available for City inspection upon request.

5.5 **Special Testing.**

(a) Throughout the term of this Franchise, City shall have the right to inspect all construction or Installation work performed pursuant to the provisions of the Franchise. In

addition, City may require special testing of a location or locations within the System if there is a particular matter of controversy or unresolved complaints regarding such construction or Installation work or pertaining to such location(s). Demand for such special tests may be made on the basis of complaints received or other evidence indicating an unresolved controversy or noncompliance. Such tests shall be limited to the particular matter in controversy or unresolved complaints. City shall endeavor to so arrange its request for such special testing so as to minimize hardship or inconvenience to Grantee or to the Subscribers caused by such testing.

(b) Before ordering such tests, Grantee shall be afforded thirty (30) Days following receipt of written notice to investigate and, if necessary, correct problems or complaints upon which tests were ordered. City shall meet with Grantee prior to requiring special tests to discuss the need for such and, if possible, visually inspect those locations which are the focus of concern. If, after such meetings and inspections, City wishes to commence special tests and the thirty (30) Days have elapsed without correction of the matter in controversy or unresolved complaints, the tests shall be conducted at Grantee's expense by Grantee's qualified engineer. The City shall have a right to participate in such testing by having an engineer of City's choosing, and at City's expense, observe and monitor said testing.

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

## **SECTION 6. PROGRAMMING AND SERVICES**

**6.1 Categories of Programming Service.** Grantee shall provide an industry standard range of video programming, including PEG Access Programming.

**6.2 Changes in Programming Services.** Grantee shall provide at least thirty (30) Days' prior written notice to Subscribers and to the City of Grantee's request to effectively delete any broad category of programming or any Channel within its control, including all proposed changes in bandwidth or Channel allocation and any assignments including any new equipment requirements that may occur as a result of these changes.

**6.3 Parental Control Device or Capability.** Upon request by any Subscriber, Grantee shall make available a parental control or lockout device or functionality that will enable the Subscriber to block all access to any and all Channels without affecting those not blocked. Grantee shall inform Subscribers of the availability of the lockout device or functionality at the time of original subscription and annually thereafter.

**6.4 FCC Reports.** Unless otherwise required by the terms of this Franchise, the results of any tests required to be filed by Grantee with the FCC or in the Grantee's public file shall be made available to City upon request.

**6.5 Free Cable Service to Public Buildings.**



(a) Throughout the term of this Franchise, Grantee shall provide, free of charge, one (1) service Drop, up to three (3) Converters if necessary, and Basic Cable Service (“In Kind”), to all of the sites listed on **Exhibit A** attached hereto. City and Grantee do not waive any rights under Applicable Law regarding Complimentary Service. The parties expressly acknowledge and agree that such value counts as a credit against the Franchise Fee. City may, upon thirty (30) days written notice to Grantee, elect to remit payment of the value amount directly to Grantee such that there is no credit counted against the Franchise Fee for the In Kind services described in this paragraph.

(c) The City or the building occupant shall have the right to extend Cable Service throughout the building to additional outlets without any fees imposed by Grantee for the provision of Complimentary Service to such additional outlets. If ancillary equipment, such as a Converter, is required to receive the signal at additional outlets, Grantee will provide additional devices at Grantee’s lowest residential equipment rate charged within the Twin Cities metropolitan area.

**6.6 Limitation on Free Service.** Notwithstanding anything to the contrary set forth in this Section, Grantee shall not be required to provide Complimentary Service to such buildings unless it is technically feasible. Outlets and maintenance of said Complimentary Service shall be provided free of fees and charges.

**6.7 Annexation.** Unless otherwise provided by Applicable Law, including the City Code, upon the annexation of any additional land area by City, the annexed area shall thereafter be subject to all the terms of this Franchise upon sixty (60) Days written notification to Grantee of the annexation by City. Unless otherwise required by Applicable Laws, nothing herein shall require the Grantee to expand its Cable System to serve, or to offer Cable Service to any area annexed by the City if such area is then served by another Wireline MVPD franchised to provide multichannel video.

**6.8 Line Extension.**

(a) Grantee shall construct and operate its Cable System so as to provide Cable Service within the Franchise Area where there exists a density equivalent of seven (7) dwelling units per one-quarter (1/4) mile of feeder cable as measured from the nearest active plant of the Cable System if the extension is to be constructed using aerial plant, and nine (9) dwelling units per one-quarter (1/4) mile of feeder cable as measured from the nearest active plant if the extension is to be constructed using underground plant. The City, for its part, shall endeavor to exercise reasonable efforts to require developers and utility companies to provide the Grantee with at least thirty (30) Days advance notice of an available open trench for the placement of necessary cable.

(b) Any residential unit located within one hundred twenty-five (125) feet from the nearest point of access on the Right-of-Way from which the Cable System is designed to serve the site shall be connected to the Cable System at no charge other than the Standard Installation charge. Grantee shall, upon request by any potential Subscriber residing in City beyond the one hundred twenty-five (125) foot limit, extend service to such Subscriber provided that the Subscriber shall pay the net additional Drop costs, unless the Grantee

agrees to waive said costs. To the extent consistent with Applicable Laws, Grantee agrees that it shall impose Installation costs for non-standard Installations in a uniform and nondiscriminatory manner throughout the City.

## **SECTION 7. CUSTOMER SERVICE PROVISIONS**

**7.1 Customer Service Standards.** The Grantee shall at all times comply with FCC customer service standards.

**7.2 Response to Customers and Cooperation with City.** Grantee shall promptly respond to all requests for service, repair, Installation and information from Subscribers. Grantee acknowledges the City's interest in the prompt resolution of all cable complaints and shall work in close cooperation with the City to resolve complaints.

**7.3 Definition of "Complaint."** For the purposes of this Section, a "complaint" shall mean any communication to the City or Grantee by a Subscriber in which the Subscriber is expressing dissatisfaction with any service, performance, or lack thereof, by Grantee under the obligations of this Franchise.

**7.4 Explanation of Service.** Grantee shall offer a process whereby Subscribers must affirmatively approve the details of a purchase, including price, term, equipment charges, and any additional service fees upon customers' initial request for service and subsequent changes to service, consistent with federal law.

**7.5 Customer Service Agreement and Written Information.** In accordance with Federal Communication Commission regulations, Grantee will provide the following information to Subscribers at the time of Installation, and at least annually thereafter, and at any time upon request.

- (a) Products and services offered;
- (b) Prices and options of programming services and conditions of subscription to programming and other services;
- (c) Installation and service maintenance policies;
- (d) Instructions on how to use Cable Service;
- (e) Channel positions of programming carried on the System; and
- (f) Billing and complaint procedures, including the address and telephone number of the local Franchise authority's office.

Grantee shall notify Subscribers thirty (30) Days in advance of any significant changes in the information required by this Section.

**7.6 Reporting.** Subject to federal law, Grantee shall submit to the City quarterly a report outlining service levels for customer service standards identified in Section 7.9 and Section 7.10

herein over the course of the previous quarter. If a report indicates that a Grantee has failed to meet any of the minimum required standards, the Grantee shall, upon request by the City, provide an explanation of the deviation, including steps being taken to cure the deviation, and the time expected to implement the cure.

**7.7 Customer Service Standards.** The City hereby adopts the customer service standards set forth in Part 76, §76.309 of the FCC's rules and regulations, as amended.

**7.8 Local Office.** Grantee shall maintain a convenient local customer service and bill payment location for matters such as receiving Subscriber payments, handling billing questions, equipment replacement and customer service information. Grantee shall comply with the standards and requirements for customer service set forth below during the term of this Franchise.

**7.9 Cable System office hours and telephone availability.**

(a) Grantee will maintain a local, toll-free or collect call telephone access line which will be available to its Subscribers twenty-four (24) hours a Day, seven (7) Days a week.

i. Trained Grantee representatives will be available to respond to customer telephone inquiries during Normal Business Hours.

ii. After Normal Business Hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after Normal Business Hours must be responded to by a trained Grantee representative on the next business Day.

(b) 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 percent (90%) of the time under Normal Operating Conditions, measured on a quarterly basis.

(c) Grantee shall utilize such equipment and software and keep such records as are necessary or required to enable the City to determine whether the Grantee is complying with all telephone answering standards required by applicable customer service regulations and laws, as amended from time to time.

(d) Customer service center and bill payment locations will be open at least during Normal Business Hours and will be conveniently located.

(e) In addition to any Customer Service Center, Grantee shall maintain and operate throughout the term of any Franchise one (1) Subscriber bill drop location within City or within a city that borders the City's geographical boundaries.

**7.10 Installations, Outages and Service Calls.** Under Normal Operating Conditions, Grantee will use reasonable commercial efforts to meet each of the following standards:

(a) Standard Installations will be performed within seven (7) business Days after an order has been placed. "Standard" Installations are those that are located up to one hundred twenty-five (125) feet from the existing distribution system as more specifically set forth in Section.

(b) Excluding conditions beyond the control of Grantee, Grantee will repair "Service Interruptions" promptly and in no event later than twenty-four (24) hours after the interruption becomes known, where the Grantee has adequate access to facilities to which it must have access in order to remedy the problem.

(c) Grantee must begin actions to correct other Service problems the next business Day after notification of the Service problem and must complete the corrections within a reasonable amount of time.

(d) The "appointment window" alternatives for Installations, Service calls, and other Installation activities will be either a specific time or, at maximum, a four (4) hour time block during Normal Business Hours. (Grantee may schedule Service calls and other Installation activities outside of Normal Business Hours for the express convenience of the customer.)

(e) Grantee may not cancel an appointment with a customer after the close of business on the business Day prior to the scheduled appointment.

(f) If Grantee's representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

#### **7.11 Communications between Grantee and Subscribers.**

(a) Refunds. Refund checks will be issued promptly, but no later than either:

- i. The customer's next billing cycle following resolution of the request or thirty (30) Days, whichever is earlier, or
- ii. The return of the equipment supplied by Grantee if Cable Service is terminated.

(b) Credits. Credits for Cable Service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

#### **7.12 Billing:**

(a) Grantee's bills shall comply with the requirements under 47 C.F.R. § 76.1619.

(b) In case of a billing dispute, Grantee must provide initial acknowledgement within 24 hours of receipt of a written complaint from a Subscriber, and a final written response within thirty (30) Days.

(c) A Grantee's billing statement must show a specific payment due date not earlier than the later of:

- i. Fifteen (15) Days after the date the statement is mailed; or
- ii. The tenth (10th) Day of the service period for which the bill is rendered.

(d) A Grantee's bill must permit a Subscriber to remit payment by mail, electronically, or in Person at the Grantee's local office or at a listed drop-off location.

(e) A Grantee's first billing statement after a new Installation or service change will be prorated as appropriate and will reflect any security deposit.

(f) Grantee shall notify Subscribers thirty (30) Days in advance of any significant changes in the information required by this Section.

**7.13 Notice or Rate Programming Change.** Grantee must provide thirty (30) Days advance notification to Subscribers of any changes in rates, programming services or Channel positions, if the change is within the control of the cable operator. Grantee shall also provide the same advanced thirty (30) Days written notice to the City before implementing any rate or Service change, if the change is within the control of the cable operator.

**7.14 Subscriber Contracts.**

(a) Grantee shall, upon written request, provide the City with any standard form residential 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.

(b) The Grantee may not require a residential Subscriber to enter into an exclusive contract as a condition of providing or continuing Cable Service. The Grantee shall not engage in acts prohibited by federal or State law that have the purpose or effect of limiting competition for the provision of Cable Service in the City.

**7.15 Refund Policy.**

(a) If a Subscriber's Cable Service is interrupted or discontinued, without cause, for a period of four (4) hours or more during a 24-hour period, Grantee shall, upon request by the Subscriber, credit such Subscriber pro rata for such interruption. For this purpose, every month will be assumed to have thirty (30) Days.

(b) If Grantee fails, upon request by a Subscriber, to provide any service being offered, Grantee shall promptly refund all deposits or advance charges paid for the service in question by said Subscriber. This provision does not alter Grantee's responsibility to Subscribers under any separate contractual agreement or relieve Grantee of any other liability.

(c) If any Subscriber terminates any monthly service because of failure of Grantee to render the service in accordance with this Franchise, Grantee shall refund to such Subscriber the proportionate share of the charges paid by the Subscriber for the services not received. This provision does not relieve Grantee of liability established in other provisions of this Franchise.

#### 7.16 **Late Fees.**

(a) Grantee shall comply with all applicable state and federal laws with respect to any assessment, charge, cost, fee or sum, however characterized, that Grantee imposes upon a Subscriber for late payment of a bill. The City reserves the right to enforce Grantee's compliance with all Applicable Laws to the maximum extent legally permissible.

(b) A late fee may not be imposed unless the Subscriber has been notified of the timing for imposition of the fee and the amount of the fee if the delinquency is not paid.

(c) Subscribers will not be charged a late fee or otherwise penalized for any failure by the Grantee, including failure to timely or correctly bill the Subscriber, or failure to properly credit the Subscriber for a payment timely made.

7.17 **Disputes.** All Subscribers and members of the general public may direct complaints, regarding Grantee's Service or performance to the Franchise Administrator of the City or the Franchise Administrators designee. Grantee must make its best efforts to contact the Subscriber who is the subject of the dispute within two (2) business Days of receiving the complaint notice from the City. The Grantee shall establish and maintain a company "escalated complaint" contact (telephone number and email address) to whom the City may forward escalated complaints, and who will work with the complainant and City to resolve such complaints.

7.18 **Customer Bills.** Customer bills shall be designed in such a way as to present the information contained therein clearly and comprehensibly to Customers, and in a way that (A) is not misleading and (B) does not omit material information. Notwithstanding anything to the contrary in Section 7.12, above, Grantee may, in its sole discretion, consolidate costs on Customer bills as may otherwise be permitted by Section 622(c) of the Cable Act (47 U.S.C. § 542(c)). The Customer bill shall include, printed clearly and prominently, the customer service line per paragraph 7.9(a) and the complaint line per paragraph 7.20.

7.19 **Failure to Resolve Complaints.** Grantee shall address all complaints within thirty (30) Days.

7.20 **Maintain a Complaint Line.** Grantee shall maintain a local telephone line, which shall be answered by a live person during normal business hours Monday through Friday to address and respond to Subscriber complaints.

7.21 **Notification of Complaint Procedure.** Grantee shall provide information to Subscribers concerning the procedures to follow when they are unsatisfied with measures taken by Grantee to remedy their complaint. This information will include the phone number of the City office or Person designated to handle complaints. Additionally, Grantee shall state that complaints should be made to Grantee prior to contacting the City.

## 7.22 **Subscriber Privacy.**

(a) To the extent required by Minn. Stat. §238.084 Subd. 1(s), Grantee shall comply with the following: 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. The request for permission must be contained in a separate document with a prominent statement that the Subscriber is authorizing the permission in full knowledge of its provisions. 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 permission. The permission shall be revocable at any time by the Subscriber without penalty of any kind whatsoever.

(b) No information or data obtained by monitoring transmission of a signal from a Subscriber terminal, including but not limited to lists of the names and addresses of Subscribers or any lists that identify the viewing habits of Subscribers shall be sold or otherwise made available to any party other than to Grantee or its agents for Grantee's business use, and also to the Subscriber subject of that information, unless Grantee has received specific written permission from the Subscriber to make such data available. The request for permission must be contained in a separate document with a prominent statement that the Subscriber is authorizing the permission in full knowledge of its provisions. 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 permission. The permission 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 this Section.

7.23 **Grantee Identification.** Grantee shall provide all customer service technicians and all other Grantee employees entering private property with appropriate picture identification so that Grantee employees may be easily identified by the property owners and Subscribers.

7.24 **Planned Interruptions of Service.** Except for a planned Service Interruption which will have a minimal impact on Subscribers, the Grantee shall use its best efforts to provide Subscribers with at least twenty-four (24) hours' prior notice of a planned Service Interruption for two (2) or more hours scheduled during Normal Business Hours.

7.25 **Disconnection/Downgrades.** A Subscriber may terminate service at any time. A Grantee will promptly disconnect from the Grantee's Cable System or downgrade any Subscriber who so requests. No charges for service may be made after the Subscriber requests disconnection beyond contractual obligations that may be applicable. No period of notice before voluntary termination or downgrade of Cable Service may be required of Subscribers by any Grantee. If prohibited by Applicable Law, there will be no charge for disconnection and any downgrade charges will conform to Applicable Law.

7.26 **Security Deposit.** Any security deposit and/or other funds due a Subscriber that disconnects or downgrades service will be returned to the Subscriber within thirty (30) Days or in the next billing cycle, whichever is later, from the date disconnection or downgrade was requested except in cases where the Subscriber does not permit the Grantee to recover its equipment, in which case the amounts owed will be paid to Subscribers within thirty (30) Days of the date the equipment was recovered, or in the next billing cycle, whichever is later.

7.27 **Disconnection due to Nonpayment.** A Grantee may not disconnect a Subscriber's Cable Service for non-payment unless:

- (a) The Subscriber is delinquent in payment for Cable Service;
- (b) The Subscriber fails to pay the amounts owed to avoid disconnection by the date of disconnection; and
- (c) No pending inquiry exists regarding the bill to which Grantee has not responded.
- (d) The Subscriber has received advance notice of the impending disconnection and a final opportunity to make payment.

7.28 If the Subscriber pays all amounts due, including late charges, before the date scheduled for disconnection, the Grantee will not disconnect service. Service may only be terminated on Days in which the Customer can reach a representative of the Grantee either in person or by telephone.

7.29 The Grantee will promptly reinstate service after disconnection (except as noted below) upon payment by the Subscriber in full of all proper fees or charges, including the payment of the reconnection charge, if any.

7.30 **Deposits.** A Grantee may require a reasonable, non-discriminatory deposit on equipment provided to Subscribers. If required by Applicable Law, Deposits will be placed in an interest-bearing account, and the Grantee will return the deposit, plus interest earned to the date the deposit if applicable, to the Subscriber, less any amount the Grantee can demonstrate should be deducted for damage to such equipment.

## **SECTION 8. PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS**

8.1 **Number of PEG Access Channels.** Grantee shall continue to make available a minimum of three (3) High Definition PEG Access Channels for the Franchise term, unless otherwise stipulated in this Franchise. Grantee shall provide the PEG Access Channels on the Basic Tier or such other most-basic tier of service as may be offered by Grantee in accordance with the Cable Act, Section 611, and as further set forth in this Section 8.

- (a) PEG Access Channels and programming shall be delivered by City to Grantee in HD format. Grantee shall provide all necessary transmission equipment from the Demarcation Point and throughout Grantee's distribution system, in order to deliver the PEG Access Channels to Subscribers.



(b) For purposes of this Franchise, an HD signal refers to a television signal delivering picture resolution of either 720p or greater, or such other resolution in this same range that company utilizes for other similar non-sport, non-movie programming Channels on the Cable System, whichever is greater.

(c) If a PEG Access Channel provided under this section is not being utilized by the City, Grantee may utilize such PEG Access Channel in its sole discretion, until such time as the City elects to utilize the PEG Access Channel for its intended purpose. In the event the City wishes to utilize the PEG Access Channel, it will give Grantee thirty (30) days written notice of its intent, at which time Grantee shall convert the non-utilized channel to a PEG Access Channel.

## 8.2 **HD PEG Channels.**

(a) Nothing herein shall diminish any rights of the City to secure additional PEG Channels pursuant to Minnesota Statutes Section 238.084, which is expressly incorporated herein by reference.

(b) All PEG Access Channels must be receivable by Subscribers without special expense in addition to the expense paid to receive Cable Service.

(c) The City is responsible for acquiring all equipment necessary to produce programming in HD and may be paid for out of PEG funds.

(d) Grantee shall have the right to use any technology to deploy or deliver HD signals (including selection of compression, utilization of IP and other processing characteristics) so long as it produces signal quality for the consumer that is reasonably comparable (from the viewer's standpoint) and functionally equivalent to similar commercial HD signals carried on the Cable System.

8.3 **Control of PEG Access Channels.** The control and administration of the PEG Access Channels shall rest with the City. The City may delegate, from time to time over the term of this Franchise, such control and administration to various entities as determined in City's sole discretion.

8.4 **Transmission of Access Channels.** PEG Access Channels may be used for transmission of non-video signals in compliance with Applicable Laws. This may include downstream transmission of data using a protocol such as TCP/IP or current industry standards. Should Grantee develop the capability to provide bi-directional data transmission, spectrum capacity shall be sufficient to allow Subscribers to transmit data to PEG facilities.

## 8.5 **PEG Access Channel Locations.**

(a) PEG Access Channels shall be carried on the Basic Cable Service tier as set forth in Section 8.1 herein. Nothing herein precludes the Grantee from charging for equipment needed for Basic Cable Service.

- (b) Grantee shall continue cablecasting PEG Access Programming on the Cable System on the same Channel designations as such programming is cablecast within the City as of the Effective Date.
- (c) PEG Access Channel locations as of the Effective Date are Channels 16, 18 and 20.
- (d) In no event shall any Access Channel reallocations be made prior to ninety (90) Days written notice to the City by Grantee, except for circumstances beyond Grantee's reasonable control.
- (e) Grantee agrees not to encrypt the Access Channels differently than other commercial Channels available on the Cable System.
- (f) Grantee shall make reasonable efforts to minimize Channel movements for PEG Access Channels and shall make reasonable efforts to locate PEG Access Channels in its lineup in a manner that is easily accessible to Subscribers and is placed in the same Channel neighborhood with other local broadcast Channels. In the event a PEG Access Channel is moved, Grantee, at Grantee's expense, will provide notice to Subscribers in accordance with Federal Communications Commission regulations.

**8.6 Navigation to Access Channels/Electronic Programming Guide.** Grantee agrees that if it utilizes a visual interface under its control on its Cable System for all Channels, the PEG Access Channels shall be treated in a non-discriminatory fashion consistent with Applicable Laws so that Subscribers will have ready access to PEG Access Channels. Grantee will continue to make available to City the ability to place PEG Channel programming information on the interactive Channel guide via the electronic programming guide ("EPG") vendor ("EPG provider") that Grantee utilizes to provide the guide service. Grantee will be responsible for providing the designations and instructions necessary for the PEG Access Channels to appear on the EPG. The City shall be responsible for providing programming information to the EPG provider and for any costs the EPG provider charges to programmers who utilize its service. This obligation shall not apply to any PEG Channel for which there is a technical impediment to providing guide listings, for example, in the event a PEG Channel is narrow casted or split among more than one PEG programmer or source such that not all viewers see the same programming on that Channel.

**8.7 Ownership of Access Channels.** Grantee does not relinquish its ownership of or ultimate right of control over a Channel by designating it for PEG use. A PEG access user – whether an individual, educational or governmental user – acquires no property or other interest by virtue of the use of a Channel position so designated. Grantee shall not exercise editorial control over any public, educational, or governmental use of a Channel position, except Grantee may refuse to transmit any public access program or portion of a public access program that contains obscenity, indecency, or nudity in violation of Applicable Law.

**8.8 Noncommercial Use of PEG.** Permitted noncommercial uses of the PEG Access Channels shall include by way of example and not limitation: (1) the identification of financial supporters similar to what is provided on public broadcasting stations; or (2) the solicitation of financial support for the provision of PEG programming by the City or third party users for charitable,

educational or governmental purposes; or (3) programming offered by accredited, non-profit, educational institutions which may, for example, offer telecourses over a PEG Access Channel.

#### 8.9 **Interconnection.**

(a) Grantee shall maintain the following existing fiber paths and interconnections as of the Effective Date to facilitate the transport and playback of PEG Access programming and PEG Channels in the formats provided by the City (HD), with no degradation of signal quality, with no lag time, and with no delay, consistent with industry standards. Such fiber paths and interconnections listed in this Section 8.9(b) shall be maintained by Grantee free of charge. Grantee shall not be responsible for fiber “replacement” but will handle any damage and all maintenance on the existing fiber.

(b) Grantee shall also maintain, free of charge and with no transport costs or other fees imposed upon City, the existing connection(s) as of the Effective Date that facilitate the transport and playback of School District programming on the designated PEG Channels as specified in Section 8 herein.

(c) To the extent technically feasible, Grantee will allow necessary interconnection with any newly constructed City, County and school fiber for noncommercial programming to be promoted and administered by the City as allowed under Applicable Laws and at no additional cost to the City or schools. This may be accomplished through a patch panel or other similar facility and each party will be responsible for the fiber on their respective sides of the Demarcation Point. Grantee reserves its right to review on a case-by-case basis the technical feasibility of the proposed interconnection. Based on this review Grantee may condition the interconnection on the reasonable reimbursement of Grantee’s incremental costs, with no markup for profit, to recoup Grantee’s construction costs only.

8.10 **Ancillary Equipment.** Any ancillary equipment operated by Grantee for the benefit of PEG Access Channels on Grantee’s fiber paths or Cable System, whether referred to switchers, routers or other equipment, will be maintained by Grantee, at no cost to the City or schools for the life of the Franchise. Grantee is responsible for any ancillary equipment on its side of the Demarcation Point and the City or school is responsible for all other production/playback equipment.

#### 8.11 **Access Channel Carriage.**

(a) Grantee shall provide all necessary transmission equipment from the Demarcation Point and throughout Grantee’s distribution system in order to deliver the PEG Access Channels. Any and all costs associated with any modification of the Access Channels or signals after the Access Channels/signals leave the City’s designated playback facilities, or any designated playback center authorized by the City shall be borne entirely by Grantee. Grantee shall not cause any programming to override PEG programming on any Access

Channel, except by oral or written permission from the City, with the exception of emergency alert signals.

(b) Grantee shall maintain three HD (3) PEG Access Channels: 16 (Savage Government Programming), 18 (Savage Community Programming), and 20 (Savage Educational Programming).

(c) The City or its designee shall be responsible for developing, implementing, interpreting and enforcing rules for PEG Access Channel use.

(d) The Grantee shall monitor the Access Channels for technical quality to ensure that they meet FCC technical standards including those applicable to the carriage of Access Channels, provided however, that the Grantee is not responsible for the production quality of PEG programming productions. The City, or its designee, shall be responsible for the production and quality of all PEG access programming. Grantee shall carry all components of the standard definition of Access Channel including, but not limited to, closed captioning, stereo audio and other elements associated with the programming.

#### **8.12 Access Channel Support.**

(a) Effective with the first Subscriber bill after the Effective Date of this Franchise, Grantee shall pay to the City a PEG fee per subscriber per month as follows:

- 2021 - \$0.75;
- 2022 - \$1.00;
- 2023 - \$1.25
- 2024-2030 - \$1.50.

(b) The PEG Fee may be used by City as allowed by Applicable Law. The City warrants that that the PEG Fee is used solely for capital expenditures and outlay.

(c) The PEG Fee is not part of the Franchise Fee and instead falls within one or more of the exceptions in 47 U.S.C. § 542. The PEG Fee may be categorized, itemized, and passed through to Subscribers as permissible, in accordance with 47 U.S.C. § 542 or other Applicable Laws. Grantee shall pay the PEG Fee to the City quarterly at the same time as the payment of Franchise Fees. Grantee agrees that it will not offset or reduce its payment of past, present or future Franchise Fees required as a result of its obligation to remit the PEG Fee.

(d) Any PEG Fees owing pursuant to this Franchise which remain unpaid more than thirty (30) Days after the date the payment is due shall be delinquent and shall thereafter accrue interest at twelve percent (12%) per annum or the prime lending rate published by the Wall Street Journal on the Day the payment was due plus two percent (2%), whichever is greater.

#### **8.13 PEG Technical Quality.**

(a) Grantee shall not be required to carry a PEG Access Channel in a higher quality format than that of the Channel Signal delivered to Grantee, but Grantee shall not implement a change in the method of delivery of Access Channels that results in a material degradation of signal quality or impairment of viewer reception of Access Channels, provided that this requirement shall not prohibit Grantee from implementing new technologies also utilized for commercial Channels carried on its Cable System. Grantee shall meet FCC signal quality standards when offering Access Channels on its Cable System and shall continue to comply with closed captioning pass-through requirements. There shall be no significant deterioration in an Access Channels signal from the point of origination upstream to the point of reception downstream on the Cable System.

(b) Within twenty-four (24) hours of a written or e-mailed request from City to the Grantee identifying a technical problem with a Access Channel and requesting assistance, Grantee will provide technical assistance or diagnostic services to determine whether or not a problem with a PEG signal is the result of matters for which Grantee is responsible and if so, Grantee will take prompt corrective action. If the problem persists and there is a dispute about the cause, then the Parties shall meet with engineering representation from Grantee and the City in order to determine the course of action to remedy the problem.

8.14 **Access Channel Promotion.** At such time as an Access Channel is moved, relocated or launched in HD, Grantee shall provide a bill message announcing the change upon the written or e-mailed request of the City.

8.15 **Change in Technology.** In the event Grantee makes any change in the Cable System and related equipment and facilities or in its signal delivery technology, which requires the City to obtain new equipment in order to be compatible with such change for purposes of transport and delivery of the Access Channels, Grantee shall, at its own expense and free of charge to City or its designated entities, purchase such equipment as may be necessary to facilitate the cablecasting of the Access Channels in accordance with the requirements of the Franchise.

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

8.17 **Regional Channel Six.** Grantee shall make available Regional Channel Six as long as it is required to do so by Applicable Law.

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

8.19 **PEG Capital Grant to City.** Within 90 days of the Effective Date of this Franchise, Grantee shall provide the city with a non-refundable PEG capital grant of twenty-five thousand dollars (\$25,000.00). City shall only use the funds received under this section for the purchase,

maintenance, upgrade, replacement, or repair of PEG equipment as generally set forth in the needs based assessment previously provided to Grantee.

## **SECTION 9. REGULATORY PROVISIONS**

9.1 **Intent.** The City shall have the right to administer and regulate activities under the Franchise up to the full extent permitted by Applicable Law.

9.2 **Delegation of Authority to Regulate.** The City reserves the right to delegate its regulatory authority wholly or in part to agents of the City, including, but not limited to, an agency which may be formed to regulate several franchises in the region in a manner consistent with Applicable Laws. Any existing delegation in place at the time of the grant of this Franchise shall remain intact unless expressly modified by City. The parties understand that body ultimately enforcing this ordinance will be the City Council.

9.3 **Areas of Administrative Authority.** In addition to any other regulatory authority granted to the City by law or Franchise, the City or its designee, shall have administrative authority in the following areas:

- (a) Administering and enforcing the provisions of this Franchise, including the adoption of administrative rules and regulations to carry out this responsibility.
- (b) Coordinating the operation of Access Channels.
- (c) Formulating and recommending long-range cable communications policy for the Franchise Area.
- (d) Disbursing and utilizing Franchise revenues paid to the City.
- (e) Administering the regulation of rates, to the extent permitted by Applicable Law.
- (f) All other regulatory authority permitted under Applicable Law.

The City or its designee shall have continuing regulatory jurisdiction and supervision over the System and the Grantee's operations under the Franchise to the extent allowed by Applicable Law.

9.4 **Regulation of Rates and Charges.**

- (a) **Right to Regulate.** The City reserves the right to regulate rates or charges for any Cable Service within the limits of Applicable Law, to enforce rate regulations prescribed by the FCC, and to establish procedures for said regulation or enforcement.
- (b) **Notice of Change in Rates and Charges.** Throughout the term of this Franchise, Grantee shall give the City and all Subscribers within the City at least thirty (30) Days' notice of any intended modifications or additions to Subscriber rates or charges. Nothing in this subsection shall be construed to prohibit the reduction or waiving of rates or charges

in conjunction with promotional campaigns for the purpose of attracting Subscribers or users.

(c) **Rate Discrimination Prohibited.** Within any category of Subscribers, Grantee shall not discriminate among Subscribers with regard to rates and charges made for any service based on considerations of race, color, religion, sex, handicap, family status, or , national origin, except as otherwise provided herein; and for purposes of setting rates and charges, no categorization of Subscribers shall be made by Grantee on the basis of those considerations. Nevertheless, Grantee shall be permitted to establish (1) discounted rates and charges for providing Cable Service to low-income, handicapped, or low-income elderly Subscribers, (2) promotional rates, and (3) bulk rate and package discount pricing.

## **SECTION 10. BOND**

### **10.1 Performance Bond.**

(a) On or before the Effective Date and at all times thereafter until the Grantee has liquidated all of its obligations with the City, the Grantee shall furnish a bond in the amount of one hundred thousand dollars (\$100,000.00) in a form and with such sureties as are reasonably acceptable to the City. This bond will be conditioned upon the faithful performance by the Grantee of its Franchise obligations and upon the further condition that in the event the Grantee shall fail to comply with any law, ordinance or regulation governing the Franchise, there shall be recoverable jointly and severally from the principal and surety of the bond any damages or loss suffered by City as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the Grantee, plus a reasonable allowance for attorneys' fees and costs, up to the full amount of the bond, and further guaranteeing payment by the Grantee of claims, liens and taxes due the City 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.

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 cure period and thereafter uses reasonable diligence to correct the violation or liability.

(b) 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.

(c) 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.

(d) 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.

10.2 **Rights.** The rights reserved by City with respect to the bond are in addition to all other rights the City may have under this Franchise or any other law.

10.3 **Reduction of Bond Amount.** City may, in its sole discretion, reduce the amount of the bond.

## SECTION 11. LETTER OF CREDIT

11.1 **Letter of Credit.** If the City determines that there is an uncured breach by Grantee of a material provision of this Franchise or a pattern of repeated violations of any provision(s) of this Franchise, then Grantee shall, upon written request, establish and provide to the City, as security for the faithful performance by Grantee of all of the provisions of this Franchise, an irrevocable letter of credit from a financial institution satisfactory to the City in the amount of Ten Thousand and No/100 Dollars (\$10,000.00). In no event shall Grantee fail to post a Ten Thousand and No/100 Dollar (\$10,000.00) letter of credit within thirty (30) Days receipt of a notice of Franchise violation pursuant to this Section 10.1. Failure to post said letter of credit shall constitute a separate material violation of this Franchise, unless the breach is cured within such thirty (30) Day period or longer period allowed under the Franchise. The letter of credit shall serve as a common security fund for the faithful performance by Grantee of all the provisions of this Franchise and compliance with all orders, permits and directions of the City and the payment by Grantee of any claim, liens, costs, expenses and taxes due the City which arise by reason of the construction, operation or maintenance of the Cable System. Interest on this deposit shall be paid to Grantee by the bank on an annual basis. The security may be terminated by the Grantee upon the resolution of the alleged noncompliance. The obligation to establish the security fund required by this paragraph is unconditional. The fund must be established in those circumstances where Grantee disputes the allegation that it is not in compliance and maintained for the duration of the dispute. If Grantee fails to establish the security fund as required, the City may take whatever action is appropriate to require the establishment of that fund and shall be entitled to an award of its costs and reasonable attorneys' fees in that action.

11.2 **Withdrawal of Funds.** The irrevocable letter of credit shall permit the City to withdraw funds upon demand (sight draft). Grantee shall not use the security fund for other purposes and shall not assign, pledge or otherwise use this security fund as security for any purpose.

11.3 **Restoration of Funds.** Within ten (10) Days after notice to it that any amount has been withdrawn by the City from the security fund pursuant to 10.4 of this Section, Grantee shall deposit a sum of money sufficient to restore such security fund to the required amount.



**11.4 Liquidated Damages.** In addition to recovery of any monies owed by Grantee to City or damages to City 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 liquidated damages in the amount of two hundred and fifty dollars (\$250.00) per day for each day, or part thereof, that any Franchise breach for non-compliance occurs or continues.

**11.5 Each Violation a Separate Violation.** Each violation of any provision of this Franchise shall be considered a separate violation for which separate liquidated damages can be imposed.

**11.6 Maximum 120 Days.** Any liquidated damages for any given violation shall be imposed upon Grantee for a maximum of one hundred twenty (120) Days. If after that amount of time Grantee has not cured or commenced to cure the alleged breach to the satisfaction of the City, the City may pursue all other remedies.

**11.7 Withdrawal of Funds to Pay Taxes.** If Grantee fails to pay to the City any taxes due and unpaid; or fails to repay to the City, any damages, costs or expenses which the City shall be compelled to pay by reason of any act or default of the Grantee in connection with this Franchise; or fails, after thirty (30) days' notice of such failure by the City to comply with any provision of the Franchise which the City reasonably determines can be remedied by an expenditure of the security, the City may then withdraw such funds from the security fund. Payments are not Franchise Fees as defined within this Franchise.

**11.8 Procedure for Draw on Letter of Credit.** Whenever the City finds that Grantee has violated one (1) or more terms, conditions or provisions of this Franchise, a written notice shall be given to Grantee. The written notice shall describe in reasonable detail the alleged violation so as to afford Grantee an opportunity to remedy or dispute the violation. Grantee shall have thirty (30) Days subsequent to receipt of the notice in which to correct the violation, or longer as set forth in Section 11.10 below, before the City may require Grantee to make payment of damages, and further to enforce payment of damages through the security fund. Grantee may, within ten (10) Days of receipt of notice, notify the City that there is a dispute as to whether a violation or failure has, in fact, occurred. Such notice by Grantee shall specify with particularity the matters disputed by Grantee and shall stay the running of the above-described time.

(a) City shall hear Grantee's dispute at a regularly scheduled or specially scheduled Council meeting within sixty (60) days of receipt of Grantee's written notice of a dispute. Grantee shall have the right to speak and introduce evidence. The City shall determine if Grantee has committed a violation and shall make written findings of fact relative to its determination. If a violation is found, Grantee may petition for reconsideration.

(b) If after hearing the dispute, the claim is upheld by the City, then the Grantee shall pay such liquidated damages as may be due and the City may begin to draw from the security fund as provided in Section 11.10 below.

**11.9 Time for Correction of Violation.** The time for Grantee to correct any alleged violation may be extended by the City if the necessary action to collect the alleged violation is of such a nature or character as to require more than thirty (30) Days within which to perform provided

Grantee commences corrective action within fifteen (15) Days and thereafter uses reasonable diligence, as determined by the City, to correct the violation.

**11.10 Grantee's Right to Pay Prior to Letter of Credit Draw.** Grantee shall have the opportunity to make prompt payment of any assessed liquidated damages and if Grantee fails to promptly remit payment to the City, the City may resort to a draw from the security fund in accordance with the terms of this Franchise.

**11.11 Failure to so Replenish Letter of Credit.** If the letter of credit is activated pursuant to Section 11.1 and is set to expire prior to expiration of the Franchise, it shall be renewed or replaced prior to its expiration. If the City draws on the letter of credit, the Grantee shall replace or replenish such letter of credit to its full amount within ten (10) Days. If the security fund is not so replaced, City may draw the whole remaining amount thereof and hold the proceeds, without interest, and use the proceeds to pay costs incurred by City in performing and paying for any or all of the obligations, duties and responsibilities of Grantee under this Franchise that are not performed or paid for by Grantee pursuant hereto, including attorneys' fees incurred by the City in so performing and paying. The failure to so replace any security fund may also, at the option of City, 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.

**11.12 Collection of Funds Not Exclusive Remedy.** The collection by City of any damages or monies 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. Notwithstanding this Section, however, should the City elect to impose liquidated damages, that remedy shall remain the City's exclusive remedy for the one hundred twenty (120) Day period set forth in this Franchise.

## **SECTION 12. DEFAULT**

**12.1 Basis for Default.** City shall give written notice of default to Grantee if City reasonably determines that Grantee has:

- (a) Violated any material provision of this Franchise or the acceptance hereto or any rule, order, regulation or determination of the City, State or federal government, not in conflict with this Franchise the violation of which prevents the Grantee from operating the Cable System in compliance with this Franchise;
- (b) Attempted to evade any material provision of this Franchise or the acceptance hereof;
- (c) Practiced any fraud or deceit upon City or Subscribers resulting in material harm;
- (d) Made a material misrepresentation of fact in the application for or negotiation of this Franchise.

**12.2 Default Procedure.** If Grantee fails to cure such default within thirty (30) Days after the giving of such notice (or if such default is of such a character as to require more than thirty (30)

Days within which to cure the same, and Grantee fails to commence to cure the same within said thirty (30) Day period and thereafter fails to use reasonable diligence, in City's reasonable opinion, to cure such default as soon as possible), then, and in any event, such default shall be a substantial breach and City may elect to terminate the Franchise. The City may place the issue of revocation and termination of this Franchise before the governing body of City at a regular meeting. If City decides there is cause or reason to terminate, the following procedure shall be followed:

- (a) City shall provide Grantee with a written notice of the reason or cause for proposed termination and shall allow Grantee a minimum of thirty (30) Days subsequent to receipt of the notice in which to correct the default.
- (b) Grantee shall be provided with an opportunity to be heard at a public hearing prior to any decision to terminate this Franchise.
- (c) If, after notice is given and an opportunity to cure, at Grantee's option, a public hearing is held, and the City determines there was a violation, breach, failure, refusal or neglect, the City may declare by resolution the Franchise revoked and of no further force and effect unless there is compliance within such period as the City may fix, such period may not be less than thirty (30) Days provided no opportunity for compliance need be granted for fraud or misrepresentation.

**12.3 Mediation.** If the Grantee and City are unable to resolve a dispute through informal negotiations during the period of thirty (30) Days following the submission of the claim giving rise to the dispute by one (1) party to the other, then unless that claim has been waived as provided in the Franchise, such claim may be subject to mediation if jointly agreed upon by both Parties. Mutually agreed upon Mediation shall stay other enforcement remedies of the Parties for a period of ninety (90) Days from the date of filing, unless stayed for a longer period by agreement of the Grantee and City. The Grantee and City shall each pay one-half of the mediator's fee and any filing fees. The mediation shall be held in the City unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as a settlement agreement in any court having jurisdiction thereof. Nothing herein shall serve to modify or on any way delay the Franchise enforcement process set forth in Section 10 of this Franchise.

**12.4 Failure to Enforce.** Grantee shall not be relieved of any of its obligations to comply promptly with any provision of the Franchise by reason of any failure of the City to enforce prompt compliance, and City's failure to enforce shall not constitute a waiver of rights or acquiescence in Grantee's conduct.

### **SECTION 13. REPORTING REQUIREMENTS**

**13.1 Quarterly Reports.** Within thirty (30) calendar Days after the end of each calendar quarter, Grantee shall submit to the City along with its Franchise Fee payment a report showing the basis for computation of such fees prepared by an officer of Grantee showing the basis for the computation of the Franchise Fees paid during that period in a form and substance substantially equivalent to **Exhibit B** attached hereto. This report shall separately indicate revenues received by

Grantee within the City including, but not limited to such items as listed in the definition of “Gross Revenues” at Section 1 of this Franchise.

13.2 **Reports.** Upon request of the City and in no event later than thirty (30) Days from the date of receipt of such request, Grantee shall, free of charge, prepare and furnish to the City such additional reports with respect to its operation, affairs, transactions, or property, as may be reasonably necessary to ensure compliance with the terms of this Franchise and as such information may be maintained in the ordinary course of business. City shall agree to maintain the continuing confidentiality of such records as so designated by Grantee. Neither City nor Grantee shall unreasonably demand or withhold information requested pursuant with the terms of this Franchise.

## **SECTION 14. COMPENSATION AND FINANCIAL PROVISIONS**

### **14.1 Franchise Fees.**

(a) During the term of the Franchise, Grantee shall pay to the City a Franchise Fee of five percent (5%) of Gross Revenues. If any such law, regulation or valid rule alters the Franchise Fee ceiling pursuant to Applicable Law, then the City shall have the authority to (but shall not be required to) increase the Franchise Fee accordingly.

(b) Nothing in this Franchise shall be construed to limit any authority of the City to impose any tax, fee or assessment of general applicability.

(c) Franchise Fees shall be paid quarterly not later than thirty (30) Days following the end of a given quarter. In accordance with Section 13.1 of this Franchise, Grantee shall file with the City a Franchise Fee payment worksheet, attached as **Exhibit B**, signed by an authorized representative of Grantee, which identifies Gross Revenues earned by Grantee during the period for which payment is made. No acceptance of any payment shall be construed as an accord that the amount paid is in fact, the correct amount, nor shall such acceptance of payment be construed as a release of any claim which the City may have for further or additional sums payable under the provisions of this Section.

(d) Furthermore, if the Grantee discovers it has materially overpaid or underpaid the City in any previous quarter, it will provide the City a written explanation of its findings prior to making any adjustments to future franchise fee payments to correct for overpayment or underpayment. The City reserves the right to contest Grantee’s claimed overpayment or underpayment including pursuant to Section 12 herein. This Section shall not apply to Grantee’s regular process for truing up third party Gross Revenues derived in the ordinary course of business, such as ad sales revenues.

(e) Upon request by the City, Grantee will provide a written explanation of a change in GAAP rules that would result in a substantive change to the calculation of Gross Revenues as defined in Section 1.

(f) Any Franchise Fees owing pursuant to this Franchise which remain unpaid more than thirty (30) Days after the dates specified herein shall be delinquent and shall thereafter accrue interest at the lower of the maximum rate allowable by law or 1.5%.

**14.2 Auditing and Financial Records.** All amounts paid by Grantee shall be subject to audit and recomputation by City or its designee, but no more than once in any calendar year, and acceptance of any payment shall not be construed as an accord that the amount paid is in fact the correct amount or a waiver of any claim that the City may be entitled to additional sums. The Grantee shall be responsible for providing the City all records necessary to confirm the accurate payment of Franchise Fees that relate to the preceding twelve (12) month period. The Grantee shall maintain such records for six (6) years. If an audit discloses an overpayment or underpayment, the City shall notify the Grantee of such overpayment or underpayment. The City's audit expenses shall be borne by the City unless the audit determines that the payment to the City should be increased by more than five percent (5%) in the audited period, in which case the reasonable third-party costs of the audit shall be borne by the Grantee as a cost incidental to the enforcement of the Franchise not to exceed \$5,000. Any overpayment by Grantee shall be credited to Grantee's next quarterly payment or paid back to Grantee in the amount of the overpayment. Any additional amounts due to the City as a result of the audit shall be paid to the City within thirty (30) Days following written notice to the Grantee by the City of the underpayment, which notice shall include a copy of the audit report. If the recomputation results in additional payment to the City, such amount shall be subject to a 1.5% interest charge.

**14.3 Review of Record Keeping Methodology.** Upon request, but no more than once per year, Grantee agrees to meet with a representative of the City to review its methodology of record-keeping, financial reporting, computing Franchise Fee obligations, and other procedures the understanding of which the City deems necessary for understanding the meaning of reports and records.

**14.4 Audit of Records.** Once a year, the City or its authorized agent may with thirty (30) days prior written notice and at the City's own expense conduct an independent audit of the revenues of Grantee in order to verify the accuracy of Franchise Fees paid to the City. Grantee and each parent company of Grantee shall cooperate fully in the conduct of such audit.

**14.5 Records to be reviewed.** The City agrees to request access to only those books and records, in exercising its rights under this Section, which are reasonably necessary for the enforcement and administration of the Franchise.

**14.6 Indemnification of City.**

(a) The City and its officers, boards, committees, commissions, elected and appointed officials, employees, volunteers and agents shall not be liable for any third-party loss or damage to any real or personal property of any Person, or for any injury to or death of any Person, arising out of or in connection with Grantee's construction, operation, maintenance, repair or removal of the System or as to any other action of Grantee with respect to this Franchise.

(b) Grantee shall indemnify, defend, and hold harmless the City and its officers, boards, committees, commissions, commissioners, elected and appointed officials, employees, volunteers and agents, from and against all third-party liability, damages, and penalties which they may legally be required to pay as a result of the City's exercise, administration, or enforcement of the Franchise.

(c) Nothing in this Franchise relieves 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, regrading, or changing the line of a Right-of-Way or public place or with the construction or reconstruction of a sewer or water system.

(d) Related only to PEG programming, the Grantee shall not be required to indemnify the City for negligence or misconduct on the part of the City, or its officers, boards, committees, commissions, commissioners, elected or appointed officials, employees, volunteers or agents, including any loss or claims.

(e) Nothing in this Franchise, including specifically this Section 14.6, shall be interpreted as a waiver by the City of any of its defenses of immunity or limitations on liability under Minnesota Statutes, Chapter 466 or otherwise, and the City expressly reserves all rights in this regard.

**14.7 Grantee Insurance.** 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 the Grantee, City and its officials, officers, directors, employees and agents from claims which may arise from operations under this Franchise, whether such operations be by the 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). The liability policy shall include:

(a) The policy shall provide coverage on an "occurrence" basis.

(b) The policy shall cover personal injury as well as bodily injury.

(c) The policy shall cover blanket contractual liability subject to the standard universal exclusions of contractual liability included in the carrier's standard endorsement as to bodily injuries, personal injuries and property damage.

(d) Broad form property damage liability shall be afforded.

(e) City shall be named as an additional insured on the policy.

(f) An endorsement shall be provided which states that the coverage is primary insurance with respect to claims arising from Grantee's operations under this Franchise

and that no other insurance maintained by the City will be called upon to contribute to a loss under this coverage.

(h) Standard form of cross-liability shall be afforded.

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

(j) City reserves the right to adjust the insurance limit coverage requirements of this Franchise no more than once every three (3) years. Any such adjustment by City will be no greater than the increase in the State of Minnesota Consumer Price Index (all consumers) for such three (3) year period.

(k) Upon the Effective Date, Grantee shall submit to City a certificate documenting the required insurance, as well as any necessary properly executed endorsements. The certificate and documents evidencing insurance shall be in a form acceptable to City and shall provide satisfactory evidence that Grantee has complied with all insurance requirements. Renewal certificates shall be provided to City prior to the expiration date of any of the required policies. City will not be obligated, however, to review such endorsements or certificates or other evidence of insurance, or to advise Grantee of any deficiencies in such documents and receipt thereof shall not relieve Grantee from, nor be deemed a waiver of, City's right to enforce the terms of Grantee's obligations hereunder. City reserves the right to examine any policy provided for under this paragraph or to require further documentation reasonably necessary to form an opinion regarding the adequacy of Grantee's insurance coverage.

## SECTION 15. MISCELLANEOUS PROVISIONS

15.1 **Guarantee of Performance.** Grantee agrees that it enters into this Franchise voluntarily in order to secure and in consideration of the grant from the City of a ten (10) year Franchise. Performance pursuant to the terms and conditions of this Franchise is guaranteed by Grantee.

15.2 **Entire Agreement.** This Franchise contains the entire agreement between the Parties, supersedes all prior agreements or proposals except as specifically set forth herein, and cannot be changed orally but only by an instrument in writing executed by the Parties. This Franchise is made pursuant to Minnesota Statutes Chapter 238 and the City Code and is intended to comply with all requirements set forth therein.

15.3 **Consent.** Wherever the consent or approval of either Grantee or the City is specifically required in this agreement, such consent or approval shall not be unreasonably withheld.

15.4 **Franchise Acceptance.** No later than 45 Days following City Council approval of this Franchise, Grantee shall execute and return to the City three (3) original franchise agreements. The executed agreements shall be returned to the City accompanied by performance bonds, security funds, and evidence of insurance, all as provided in this Franchise. In the event Grantee fails to accept this Franchise, or fails to provide the required documents, this Franchise shall be null and void. The Grantee agrees that despite the fact that its written acceptance may occur after the Effective Date, the obligations of this Franchise shall become effective on the Effective Date. The

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

**15.5 Amendment of Franchise.** Grantee and City may agree, from time to time, to amend this Franchise. Such written amendments may be made to address technology changes or advances subsequent to a review session pursuant to Section 2 or at any other time if City and Grantee agree that such an amendment will be in the public interest or if such an amendment is required due to changes in federal, State or local laws; provided, however, nothing herein shall restrict City's exercise of its police powers or the City's authority to unilaterally amend Franchise provisions to the extent permitted by law.

**15.6 Franchise Renewal.** Any renewal of this Franchise shall be in accordance with applicable federal, State and local laws and regulations. The term of any renewed Franchise shall be limited to a period as provided in Minn. Stat. Section 238.084, Subd. 1(c).

**15.7 Force Majeure.** In the event that either party is prevented or delayed in the performance of any of its obligations, under this Franchise by reason of acts of God, floods, fire, hurricanes, tornadoes, earthquakes, or other unavoidable casualties, insurrection, war, riot, vandalism, strikes, delays in receiving permits where it is not the fault of Grantee, public easements, sabotage, acts or omissions of the other party, or any other similar event beyond the reasonable control of that party, it shall have a reasonable time under the circumstances to perform such obligation under this Franchise, or to procure a substitute for such obligation to the reasonable satisfaction of the other party.

**15.8 Governing Law.** This Franchise shall be deemed to be executed in the State of Minnesota, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of Minnesota, as applicable to contracts entered into and performed entirely within the State.

**15.9 Nonenforcement by City.** Grantee shall not be relieved of its obligation to comply with any of the provisions of this Franchise by reason of any failure of the City or to enforce prompt compliance.

**15.10 Captions.** The paragraph captions and headings in this Franchise are for convenience and reference purposes only and shall not affect in any way the meaning of interpretation of this Franchise.

**15.11 Calculation of Time.** Where the performance or doing of any act, duty, matter, payment or thing is required hereunder and the period of time or duration for the performance is prescribed and fixed herein, the time shall be computed so as to exclude the first and include the last Day of the prescribed or fixed period or duration of time. When the last Day of the period falls on Saturday, Sunday or a legal holiday, that Day shall be omitted from the computation and the next business Day shall be the last Day of the period.

**15.12 Survival of Terms.** Upon the termination or forfeiture of the Franchise, Grantee shall no longer have the right to occupy the Right-of-Ways for the purpose of providing Cable Service. However, Grantee's obligations to the City (other than the obligation to provide service to Subscribers) shall survive according to their terms.



**15.13 No Third-Party Beneficiaries.** Nothing in this Franchise Agreement is intended to confer third-party beneficiary status on any member of the public to enforce the terms of this Franchise Agreement.

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

**15.15 Grantee Acknowledgment of Validity of Franchise.** The Grantee has reviewed the terms and conditions of this Franchise with legal counsel. Grantee acknowledges and agrees that the Franchise terms and conditions are not unreasonable or arbitrary under current law, and Grantee represents it has the power to make and enter the terms and conditions contained in this Franchise.

**15.16 Competitive Equity.**

(a) The Grantee acknowledges and agrees that the City has, prior to the Effective Date of this Franchise, granted additional franchises or other similar lawful authorizations to utilize the Rights-of-Way in order to provide Cable Services or similar video programming service within the City, and that the City may grant additional franchises or authorizations after the Effective Date. Any such franchise or other authorization shall be in conformance with Minnesota Statutes, Section 238.081, Subd. 1. Moreover, if the Grantee determines that the City has granted, after the Effective Date, such an additional franchise or other similar lawful authorization to utilize the Rights-of-Way for Cable Services or similar video programming services containing material terms and conditions that differ from Grantee's material obligations under this Franchise, or declines to require such franchise or other similar lawful authorization where it has the legal authority to do so, City agrees that the obligations in this Franchise will, pursuant to the process set forth in this Section, be amended to include any material terms or conditions that are imposed upon the new entrant, or provide relief from existing material terms or conditions, so as to insure that the regulatory and financial burdens on each entity are materially equivalent. "Material terms and conditions" include, but are not limited to: Franchise Fees and Gross Revenues; complementary services; insurance; System build-out requirements; security instruments; Public, Education and Government Access Channels and support; customer service standards; required reports and related record keeping; competitive equity (or its equivalent); audits; dispute resolution; remedies; and notice and opportunity to cure breaches. The Parties agree that this provision shall not require a word for word identical franchise or authorization for a competitive entity so long as the regulatory and financial burdens on each entity are materially equivalent. City shall furnish a copy of any competitive Cable Services franchise to Grantee upon request.

(b) The modification process of this Franchise as provided for in Section 15.17 (A) shall only be initiated by written notice by the Grantee to the City regarding specified franchise obligations. Grantee's notice shall address the following: (1) identify the specific terms or conditions in the competitive Cable Services franchise that are materially different from Grantee's obligations under this Franchise; (2) identify any Franchise terms and conditions for which Grantee is seeking amendments, and; (3) provide text for any proposed Franchise amendments to the City, with a written explanation of why the proposed amendments are necessary and consistent. Notwithstanding any modification of this Franchise pursuant to the provisions of this Section 15.17, should any entity whose authorization to provide Cable Services or similar video programming service triggered the amendments under this Section cease to provide such services within the City, the City may provide ninety (90) Days written notice to Grantee of such fact, and the City and Grantee shall enter into good faith negotiations to determine which of the original terms, conditions and obligations of this Franchise shall be reinstated and fully effective.

(c) Upon receipt of Grantee's written notice, the City and Grantee agree that they will use best efforts in good faith to negotiate Grantee's proposed Franchise modifications, and that such negotiation will proceed and conclude within a ninety (90) Day time period, unless that time period is reduced or extended by mutual agreement of the Parties. If the City and Grantee reach agreement on the Franchise modifications pursuant to such negotiations, then the City shall amend this Franchise to include the modifications.

(d) In the alternative to Franchise modification negotiations as provided for in Section 15.17 (C), or if the City and Grantee fail to reach agreement in such negotiations, Grantee may, at its option, elect to replace this Franchise by opting into the franchise or other similar lawful authorization that the City grants to another multi-channel video programming provider, with the understanding that Grantee may use its current System design and technology infrastructure to meet any requirements of the new franchise, so as to insure that the regulatory and financial burdens on each entity are equivalent. If Grantee so elects, the City shall immediately commence proceedings to replace this Franchise with the franchise issued to the other multi-channel video programming provider.

(e) Notwithstanding anything contained in this Section 15.17(A) through (D) to the contrary, the City shall not be obligated to amend or replace this Franchise unless the new entrant makes Cable Services or similar video programming services available for purchase by Subscribers or customers under its franchise agreement with the City.

(f) Notwithstanding any provision to the contrary, at any time that a wireline facilities based entity makes available for purchase by Subscribers or customers, Cable Services or multiple Channels of video programming within the Franchise Area without a franchise or other similar lawful authorization granted by the City, then:

i. Grantee may negotiate with the City to seek Franchise modifications as per Section 15.17(C) above; or

ii. The term of Grantee's Franchise shall, upon ninety (90) Days written notice from Grantee, be shortened so that the Franchise shall be deemed to expire on a

date eighteen (18) months from the first Day of the month following the date of Grantee's notice and Grantee shall be deemed to have timely invoked the renewal process under 47 USC 546; or,

iii. Grantee may assert, at Grantee's option, that this Franchise is rendered "commercially impracticable," and invoke the modification procedures set forth in Section 625 of the Cable Act.


For the purposes of this Section, a "wireline facilities based entity" means an entity, including the City that owns, controls or manages wireline facilities located in the City's Rights-of-Way, over which Cable Services or multiple Channels of video programming services are delivered subject to the City's authority to require a franchise or similar authorization under Applicable Law.

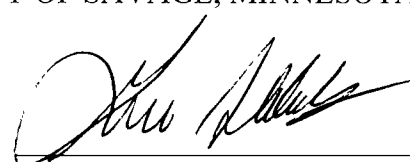
**15.18 Merger of Documents.** This Franchise, and the attachments hereto, constitute the entire Franchise agreement between the City and the Grantee, and supersede all prior oral or written franchises and understandings.

Passed and adopted this 3<sup>rd</sup> day of May 2021.

ATTEST

CITY OF SAVAGE, MINNESOTA

By:   
Brad Larson, City Administrator

By:   
Gene Abbott, Acting Mayor

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

NUVERA COMMUNICATIONS, INC.,

Date: \_\_\_\_\_

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

SWORN TO BEFORE ME this  
\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Notary Public

**Exhibit A**

**Complimentary Cable Service to Public Buildings**

|                     |                   |
|---------------------|-------------------|
| CITY HALL           | 6000 MCCOLL DRIVE |
| MARKETPLACE LIQUOR  | 8200 EAGAN DR.    |
| SAVAGE SPORT CENTER | 13450 DAKOTA AVE. |

**Exhibit B**

**Franchise Fee Payment Worksheet**

*TRADE SECRET – CONFIDENTIAL [Open until agreement language is agreed upon]*

|                              | Month/Year | Month/Year | Month/Year | Total |
|------------------------------|------------|------------|------------|-------|
| A la Carte Video Services    |            |            |            |       |
| Audio Services               |            |            |            |       |
| Basic Cable Service          |            |            |            |       |
| Installation Charge          |            |            |            |       |
| Bulk Revenue                 |            |            |            |       |
| Expanded Basic Cable Service |            |            |            |       |
| Pay Service                  |            |            |            |       |
| Pay-per-view                 |            |            |            |       |
| Guide Revenue                |            |            |            |       |
| Franchise Fee Revenue        |            |            |            |       |
| Advertising Revenue          |            |            |            |       |
| Home Shopping Revenue        |            |            |            |       |
| Digital Services             |            |            |            |       |
| Inside Wiring                |            |            |            |       |
| Other Revenue                |            |            |            |       |
| Equipment Rental             |            |            |            |       |
| Processing Fees              |            |            |            |       |
| PEG Fee                      |            |            |            |       |
| FCC Fees                     |            |            |            |       |
| Bad Debt                     |            |            |            |       |
| Late Fees                    |            |            |            |       |
| REVENUE                      |            |            |            |       |
| Fee Calculated               |            |            |            |       |

Fee Factor: 5%

EXHIBIT C

(RESERVED)

EXHIBIT D  
(RESERVED)