

ORDINANCE NO. _____

CITY OF NORTH OAKS

CABLE TELEVISION FRANCHISE ORDINANCE

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ORDINANCE NO. _____

AN ORDINANCE GRANTING A FRANCHISE TO COMCAST OF MINNESOTA, INC., D/B/A COMCAST TO CONSTRUCT, OPERATE, AND MAINTAIN A CABLE COMMUNICATIONS SYSTEM IN THE CITY OF NORTH OAKS; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM AND THE PUBLIC RIGHTS-OF-WAY IN CONJUNCTION WITH THE CITY'S RIGHT-OF-WAY ORDINANCE, IF ANY, AND PRESCRIBING PENALTIES FOR THE VIOLATION OF THE PROVISIONS HEREIN;

The City Council of the City of North Oaks ordains:

STATEMENT OF INTENT AND PURPOSE

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

Adoption of this Franchise is, in the judgment of the Council, in the best interests of the City and its residents.

FINDINGS

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

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

SECTION 1. SHORT TITLE AND DEFINITIONS

1. Short Title. This Franchise Ordinance shall be known and cited as the Comcast Cable Franchise Ordinance.

2. Definitions. For the purposes of this Franchise, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory. The word "may" is directory and discretionary and not mandatory.

a. "Basic Cable Service" shall be defined as set forth in applicable law, which is currently defined in 47 USC § 522(3) as any service tier which includes the retransmission of local television broadcast signals.

b. "City" means City of North Oaks, a municipal corporation, in the State of Minnesota, acting by and through its City Council, or its lawfully appointed designee.

c. "City Council" means the governing body of the City.

d. "Cable Service" or "Service" shall be defined as set forth in applicable law, which is currently defined in 47 USC § 522(6) as the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

e. "Cable System" or "System" shall be defined as set forth in applicable law, which is currently defined in 47 USC § 522(7) as a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of 1 or more television broadcast stations; (B) a facility that serves subscribers without using any public right-of-way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of subchapter II of the Communications Act of 1934, as amended, except that such facility shall be considered a cable system (other than for purposes of section 541(c) of the Federal Cable Act) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with section 573 of the Federal Cable Act; or (E) any facilities of any electric utility used solely for operating its electric utility system. This definition shall incorporate by reference the definition of "cable communications system" in Minnesota Statutes Section 238.02, Subdivision 3, as the same may be amended from time to time.

f. "Commission" means the North Suburban Communications Commission, a municipal Joint Powers Commission.

g. "Converter" means an electronic device such as a set-top box or digital adapter which converts signals to a frequency acceptable to a television receiver of a Subscriber and by an appropriate selector permits a Subscriber to view all Subscriber signals included in the service.

h. "Drop" means the cable that connects the ground block on the Subscriber's residence or institution to the nearest feeder cable of the System.

i. "FCC" means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.

j. "Franchise" or "Cable Franchise" means this ordinance and the regulatory and contractual relationship established hereby.

k. "Grantee" or "Comcast" is Comcast of Minnesota, Inc., its lawful successors, transferees or assignees.

l. "Gross Revenues" shall be defined as and shall be construed broadly to include all revenues derived directly or indirectly by Comcast and/or an Affiliate that is a cable operator of the Cable System, from the operation of Comcast's Cable System to provide Cable Services within the City (including cash, credits, property or other consideration of any kind or nature). Gross revenues include, by way of illustration and not limitation: monthly fees for Cable Services, regardless of whether such Cable Services are provided to residential or commercial customers, including revenues derived from the provision of all Cable Services (including but not limited to pay or premium Cable Services, digital Cable Services, pay-per-view, pay-per-event and video-on-demand Cable Services); installation, reconnection, downgrade, upgrade or similar charges associated with changes in subscriber Cable Service levels; fees paid to Comcast for channels designated for commercial/leased access use; converter, remote control, lockout device and other Cable Service equipment rentals and/or leases or sales; advertising revenues received or derived by Comcast and/or its Affiliates, including, but not limited to, rep fees, Affiliate fees, rebates and commissions, but excluding unaffiliated agency fees; late fees, convenience fees and administrative fees; revenues from program guides; franchise fees; and commissions from home shopping channels and other revenue sharing arrangements. Gross Revenues subject to franchise fees shall include revenues derived from sales of advertising that run on Comcast's Cable System within the City and shall be allocated on a *pro rata* basis using total Cable Service subscribers reached by the advertising. Additionally, Comcast agrees that Gross Revenues subject to franchise fees shall include all commissions paid to National Cable Communications ("NCC") and Comcast Spotlight ("Spotlight") 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. Gross revenues shall not include: actual bad debt write-offs, provided, however, that all or part of any such actual bad debt that is written off but subsequently collected shall be included in Gross Revenues in the period collected; and

any taxes on services furnished by Comcast imposed by any municipality, state or other governmental unit, provided that franchise fees shall not be regarded as such a tax.

i. To the extent revenues are received by Comcast for the provision of a discounted bundle of services which includes Cable Services and non-Cable Services, Comcast shall calculate revenues to be included in Gross Revenues using a methodology that allocates revenue on a *pro rata* basis when comparing the bundled service price and its components to the sum of the most recent published rate card rate for the components, except it is expressly understood that equipment may be subject to inclusion in the bundled price at full rate card value. This calculation shall be applied to every bundled service package containing Cable Service from which Comcast receives or derives revenues in the City, and must be updated within sixty (60) days of the date any rate change for cable and/or non-cable services is implemented for a service package containing Cable Service or the date any rate change is implemented for any service included in a service package that contains Cable Service. The NSCC reserves its right to review and to challenge Comcast's calculations.

ii. For purposes of this definition, the term "Affiliates" means any person(s) and/or entity(ies) who own or control, are owned or controlled by or are under common ownership or control with Comcast of Minnesota, Inc., but does not include affiliated entities such as NBCU and Spectacor that are not directly or indirectly involved with the programming, use, management, operation, construction, repair and/or maintenance of Comcast Corporation's cable systems.

iii. Resolution of any disputes over the classification of revenue should first be attempted by agreement of the Parties, but should no resolution be reached, the Parties agree that reference shall be made to generally accepted accounting principles ("GAAP") 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"). Notwithstanding the forgoing, the City and/or the Commission reserves its right to challenge Comcast's calculation of Gross Revenues, including the use or interpretation of GAAP as promulgated and defined by the FASB, EITF and/or the SEC.

m. "Installation" means the connection of the System from feeder cable to the point of connection with the Subscriber Converter or other terminal equipment.

n. "Lockout Device" means an optional mechanical or electrical accessory to a Subscriber's terminal which inhibits the viewing of a certain program, certain channel, or certain channels provided by way of the Cable Communication System.

o. "Memorandum of Understanding" or "MOU" means that certain agreement dated November 3, 1994, regarding PEG access funding, creation of a "PEG Fee" and certain rate regulatory issues.

p. "North Suburbs Access Corporation" or "NSAC" means that certain non-profit corporation or its lawful successor, designee, or assignee, which is delegated authority and responsibility for providing certain community programming functions including public access.

q. "North Suburban System" means the Cable System located in those municipalities collectively comprising the North Suburban Communication Commission.

r. "Person" is any person, firm, partnership, association, corporation, company, or other legal entity.

s. "Right-of-Way" or "Rights-of-Way" means the area on, below, or above any real property in City in which the City has an interest including, but not limited to any street, road, highway, alley, sidewalk, parkway, park, skyway, or any other place, area, or real property owned by or under the control of City, including other dedicated Rights-of-Way for travel purposes and utility easements.

t. "Right-of-Way Ordinance" means the ordinance codifying requirements regarding regulation, management and use of Rights-of-Way in City, including registration and permitting requirements.

u. "Standard Installation" means any residential installation which can be completed using a Drop of 250 feet or less.

v. "Subscriber" means any Person who lawfully receives service via the System. In the case of multiple office buildings or multiple dwelling units, the "Subscriber" means the lessee, tenant or occupant.

SECTION 2. GRANT OF AUTHORITY AND GENERAL PROVISIONS

1. Grant of Franchise.

a. This Franchise is granted pursuant to the terms and conditions contained herein.

b. Nothing in this Franchise shall be deemed to waive the lawful requirements of any generally applicable City ordinance existing as of the Effective Date.

c. Each and every term, provision or condition herein is subject to the provisions of state law, federal law, and local ordinances and regulations.

d. This Franchise shall not be interpreted to prevent the City from imposing additional lawful conditions, including additional compensation conditions for use of the Rights-of-Way, should Grantee provide service other than Cable Service.

e. No rights shall pass to Grantee by implication. Without limiting the foregoing, by way of example and not limitation, this Franchise shall not include or be a substitute for:

- i. Any other permit or authorization required for the privilege of transacting and carrying on a business within the City that may be required by the ordinances and laws of the City;
- ii. Any permit, agreement, or authorization required by the City for Right-of-Way users in connection with operations on or in Rights-of-Way or public property including, by way of example and not limitation, street cut permits; or
- iii. Any permits or agreements for occupying any other property of the City or private entities to which access is not specifically granted by this Franchise including, without limitation, permits and agreements for placing devices on poles, in conduits or in or on other structures.

f. This Franchise is intended to convey limited rights and interests only as to those Rights-of-Way in which the City has an actual interest. It is not a warranty of title or interest in any Right-of-Way; it does not provide the Grantee with any interest in any particular location within the Right-of-Way; and it does not confer rights other than as expressly provided in the grant hereof.

g. This Franchise does not authorize or prohibit Grantee to provide telecommunications service or other services, or to construct, operate or maintain telecommunications facilities. This Franchise is not a bar to imposition of any lawful conditions on Grantee with respect to telecommunications, whether similar, different or the same as the conditions specified herein. This Franchise does not relieve Grantee of any obligation it may have to obtain from the City an authorization to provide telecommunications services or other services, or to construct, operate or maintain telecommunications facilities, or relieve Grantee of its obligation to comply with any such authorizations that may be lawfully required.

2. Grant of Nonexclusive Authority.

The City reserves the right to grant additional franchises or similar authorizations to provide video programming services via Cable Systems or similar wireline systems located in the public Rights-of-Way. It is not the City's intent to treat competitors in a discriminatory manner and to advantage one competitor over another by regulation. If the City grants such an additional franchise or similar authorization to use the public rights of way to provide such services and Grantee believes the City has done so on terms materially more favorable than the Material Obligations (defined below) under this Franchise, then the provisions of this paragraph will apply.

As part of the Grantee's franchise, the City has agreed upon the following terms as a condition of granting the franchise which terms may place the Grantee at a significant competitive

disadvantage if not required of a competitor: a 5% franchise fee, PEG funding, PEG channels, and customer service obligations (hereinafter “Material Obligations”).

Within one year of the adoption of the competitor’s franchise or similar authorization, Grantee must notify the City in writing of the Material Obligations in Grantee’s franchise that exceed the Material Obligations of the competitor’s franchise to similar authorization. The City shall have sixty (60) days to agree to allow Grantee to adopt the same Material Obligations provided to the competitor, or dispute that the Material Obligations are different. In the event the City disputes the Material Obligations are different, Grantee may bring an action in federal or state court for a determination as to whether the Materials Obligations are different.

Nothing in this section is intended to alter the rights or obligations of either party under state law, and it shall only apply to the extent permitted under applicable FCC orders. In no event will the City be required to refund or to offset against future amounts due the value of benefits already received.

This provision does not apply if the City is ordered or required to issue a franchise on different terms and conditions, or it is legally unable to do so; and the relief is contingent on the new franchisee actually commencing provision of service in the market to its first customer. This provision does not apply to open video systems, nor does it apply to common carrier systems exempted from franchise requirements pursuant to 47 U.S.C. Section 571; or to systems that serve less than 5% (five per cent) of the geographic area of the City; or a system that only provides video services via the public Internet.

3. Lease or Assignment Prohibited. No Person may lease Grantee’s System for the purpose of providing Service until and unless such Person shall have first obtained and shall currently hold a valid Franchise or other lawful authorization containing substantially similar burdens and obligations to this Franchise. Any assignment of rights under this Franchise shall be subject to and in accordance with the requirements of Section 10, Paragraph 5 (Sale or Transfer of Franchise).

4. Franchise Term. This Franchise shall be in effect for a period of ten (10) years from the date of acceptance by Grantee, unless sooner renewed, revoked or terminated as herein provided.

5. Previous Franchises. Upon acceptance by Grantee as required by Section 13 herein, this Franchise shall supersede and replace any previous Ordinance granting a Franchise to Grantee, as well as the November 3, 1994 Memorandum of Understanding, except as set forth in Section 6, paragraph 8(b) (Access Support) herein.

6. Compliance with Applicable Laws, Resolutions and Ordinances.

a. The terms of this Franchise shall define the contractual rights and obligations of Grantee with respect to the provision of Cable Service and operation of the System in City. However, the Grantee shall at all times during the term of this Franchise be subject to all lawful exercise of the police power, statutory rights, local ordinance-making authority, and eminent domain rights of City. 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 City's police power, 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 Grantee as provided in Section 13.3 (Amendment of Franchise Ordinance) herein.

b. Grantee shall comply with the terms of any City ordinance or regulation of general applicability which addresses usage of the Rights-of-Way within City which may have the effect of superseding, modifying or amending the terms of Section 3 (Construction Standards) and/or Section 8.5(c) (Reports and Maps to be Filed with City) herein, except that Grantee shall not, through application of such City ordinance or regulation of Rights-of-Way, be subject to additional burdens with respect to usage of Rights-of-Way which exceed burdens on similarly situated Rights-of-Way users.

c. In the event of any conflict between Section 3 (Construction Standards) and/or Section 8.5(c) (Reports and Maps to be Filed with City) of this Franchise and any City ordinance or regulation which addresses usage of the Rights-of-Way, the conflicting terms in Section 3 (Construction Standards) and/or Section 8.5(c) (Reports and Maps to be Filed with City) of this Franchise shall be superseded by such City ordinance or regulation, except that Grantee shall not, through application of such City ordinance or regulation of Rights-of-Way, be subject to additional burdens with respect to usage of Rights-of-Way which exceed burdens on similarly situated Rights-of-Way users.

d. In the event any City ordinance or regulation which addresses usage of the Rights-of-Way adds to, modifies, amends, or otherwise differently addresses issues addressed in Section 3 (Construction Standards) and/or Section 8.5(c) (Reports and Maps to be Filed with City) of this Franchise, Grantee shall comply with such ordinance or regulation of general applicability, regardless of which requirement was first adopted except that Grantee shall not, through application of such City ordinance or regulation of Rights-of-Way, be subject to additional burdens with respect to usage of Rights-of-Way which exceed burdens on similarly situated Rights-of-Way users.

e. In the event Grantee cannot determine how to comply with any Right-of-Way requirement of City, whether pursuant to this Franchise or other requirement, Grantee shall immediately provide written notice of such question, including Grantee's proposed interpretation, to the City with copy to the North Suburban Cable Communications Commission, in accordance with Section 2.9 (Written Notice). The City or Commission shall provide a written response within fourteen (14) days of receipt indicating how the

requirements cited by Grantee apply. Grantee may proceed in accordance with its proposed interpretation in the event a written response is not received within seventeen (17) days of mailing or delivering such written question.

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

8. Territorial Area Involved. This Franchise is granted for the corporate boundaries of City, as it exists from time to time. In the event of annexation by City, or as development occurs, any new territory shall become part of the territory for which this Franchise is granted provided, however, that Grantee shall not be required to extend service beyond its present System boundaries unless there is a minimum of 50 homes per cable mile for underground plant and 35 homes per cable mile for overhead plant. Access to cable service shall not be denied to any group of potential residential cable Subscribers because of the income of the residents of the area in which such group resides. Grantee shall be given a reasonable period of time to construct and activate cable plant to service annexed or newly developed areas but in no event not to exceed twelve (12) months from notice thereof by City to Grantee and qualification pursuant to the density requirements of this Subsection.

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

If to City: City of North Oaks
 100 Village Center Drive
 North Oaks, Minnesota 55127
 Attention: City Manager/Administrator

With copies to: North Suburban Cable Communications Commission
 950 Woodhill Drive
 Roseville, Minnesota 55113

If to Grantee: General Manager
 Comcast
 10 River Park Plaza
 St Paul, Minnesota 55107

With copies to: Vice President of Government Affairs
Comcast
1701 JFK Boulevard
Philadelphia, PA 19103

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

10. Subscriber Network Drops to Designated Buildings. Grantee shall, at no cost to the City, continue to provide Digital Starter or equivalent package of Cable Service and reception equipment to up to three (3) outlets at all municipal government buildings, schools and public libraries located in the City where Grantee provides Cable Service as listed on **Exhibit A**. The City may request up to 5 additional municipal government buildings, schools, or public libraries during the term of this Agreement, provided that the City shall pay the actual incremental installation costs for any location in excess of 500 feet of Grantee's existing plant where the recipient makes available conduit or aerial structures to accommodate the new facilities, or any Drop in excess of two hundred fifty (250) feet. For purposes of this subsection, "school" means all State-accredited K-12 public and private schools. Outlets of Basic and Expanded Basic Service provided in accordance with this subsection may be used to distribute Cable Services throughout such buildings; The City shall have the right to extend service to multiple outlets within the building with the costs of constructing additional outlets the responsibility of the City; provided such distribution can be accomplished without causing Cable System disruption and general technical standards are maintained. Such outlets may only be used for lawful purposes. If additional devices beyond the allocated amount per location provided above are needed to serve additional outlets, those devices shall be made available at Grantee's best discounted rate. All inside wiring shall be the responsibility of the City, or public institution, and subject to service or repair by Comcast at standard rates. Any such institution located more than two hundred fifty (250) feet shall be connected if such institution agrees to reimburse Grantee for Grantee's actual costs in excess of the two hundred fifty (250) foot installation actual costs.

SECTION 3. CONSTRUCTION STANDARDS

1. Registration, Permits and Construction Codes.

a. Grantee shall strictly adhere to all state and local laws and building and zoning codes currently or hereafter applicable to location, construction, installation, operation or maintenance of the System in City and give due consideration at all times to the aesthetics of the property.

b. Subject to the requirements of Section 9 (Dispute Resolution) below, failure to obtain permits or comply with permit requirements shall be grounds for revocation of this Franchise if such requirements are violated for significant construction activities of an extended period of time or in a quantity and frequency so as to demonstrate a wanton disregard for such requirements, or any lesser sanctions provided herein or in any other applicable law.

2. Repair of Rights-of-Way and Property. Any and all Rights-of-Way, or public or private property, which are disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance, expansion, extension or reconstruction of the System shall be promptly and fully restored by Grantee, at its expense, to the same condition as that prevailing prior to Grantee's work, as determined by City. If Grantee shall fail to timely perform the restoration required herein, after written request of City and reasonable opportunity of not less than 30 days to satisfy that request, City shall have the right to put the Rights-of-Way, public, or private property back into good condition. In the event City determines that Grantee is responsible for such disturbance or damage, Grantee shall be obligated to fully reimburse City for such restoration.

3. Conditions on Right-of-Way Use.

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

b. All System transmission and distribution structures, lines and equipment erected by the Grantee within City shall be located so as not to obstruct or interfere with the use of Rights-of-Way except for normal and reasonable obstruction and interference which might occur during construction and to cause minimum interference with the rights of property owners who abut any of said Rights-of-Way and not to interfere with existing public utility installations.

c. If at any time during the period of this Franchise City shall elect to alter or change the grade or location of any Right-of-Way, the Grantee shall comply with all applicable City Code related to relocation of facilities and associated costs.

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

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

f. The Grantee shall have the authority to trim any trees upon and overhanging the Rights-of-Way of City so as to prevent the branches of such trees from coming in contact with the wires and cables or other facilities of the Grantee.

g. Grantee shall use its best efforts to give reasonable prior notice to any adjacent private property owners who will be negatively affected or impacted by Grantee's work in the Rights-of-Way.

4. Undergrounding of Cable. Unless otherwise required by action of City Council, Grantee must place newly constructed facilities underground in areas of City where all other utility lines are placed underground. Amplifier boxes and pedestal mounted terminal boxes may be placed above ground if existing technology reasonably requires, but shall be of such size and design and shall be so located as not to be unsightly or unsafe, all pursuant to plans submitted with Grantee's permit application(s) and approved by City.

5. Installation of Facilities. No poles, conduits, amplifier boxes, pedestal mounted terminal boxes, similar structures, or other wire-holding structures shall be erected or installed by the Grantee without required permit of City.

6. Safety Requirements.

a. The Grantee shall at all times employ ordinary and reasonable care and shall install and maintain in use nothing less than commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage or injuries.

b. The Grantee shall install and maintain its System and other equipment in accordance with City's codes and the requirements of the National Electric Safety Code and all other applicable FCC, state and local regulations, and in such manner that they will not interfere with City communications technology related to health, safety and welfare of the residents.

c. All System structures, and lines, equipment and connections in, over, under and upon the Rights-of-Way of City, wherever situated or located, shall at all times be kept and maintained in good condition, order, and repair so that the same shall not menace or endanger the life or property of City or any Person.

SECTION 4. DESIGN PROVISIONS

1. System Capabilities; Minimum Channel Capacity.

a. Grantee shall maintain, upgrade, and operate the Cable System consistent with the capabilities of at least a 750MHz cable system and applicable industry standards.

b. All final programming decisions remain the discretion of Grantee but the Cable System shall generally made available a broad range of programming of interest to the community, provided that Grantee notifies City and Subscribers in writing thirty (30) days prior to any channel deletions or realignments, and further subject to Grantee's signal carriage obligations hereunder and pursuant to 47 USC §§ 531-536, and further subject to City's rights pursuant to 47 USC § 545. Location and relocation of the PEG Channels shall be governed by Section 6.1(c) (Public, Educational and Governmental Access).

2. Interruption of Service. The Grantee shall interrupt service only for good cause and for the shortest time possible. Such interruption shall occur during periods of minimum use of the System. If service is interrupted on all cable channels for a period of more than forty eight (48) hours, Subscribers shall be credited pro rata for such interruption. Outages for shorter time periods may be credited upon customer request following notification of the outage.

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

4. Special Testing.

a. The City/Commission shall have the right to inspect all construction or installation work performed pursuant to the provisions of the Franchise. In addition, the City/Commission 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. The City/Commission 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. The City/Commission 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/Commission 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 a qualified engineer selected by City/Commission and Grantee, and Grantee shall cooperate in such testing. Grantee shall not be required to pay for the special tests where Grantee can show to the City/Commission's reasonable satisfaction that it performed its own tests and undertook corrective action to remedy the problem.

6. Drop Testing and Replacement. Drops and passive equipment shall be inspected by Grantee during Installations to assure the Drop and passive equipment can provide reliable Cable Service to Subscribers. Drops shall be maintained in compliance with applicable safety and technical regulations and replaced when necessary to do so.

7. FCC Reports. The results of any tests required to be filed by Grantee with the FCC shall upon request of City also be filed with the City or its designee within ten (10) days of the conduct of such tests.

8. Interconnection. The System servicing the Cities of Arden Hills, Falcon Heights, Lauderdale, Little Canada, Mounds View, New Brighton, North Oaks, Roseville, and St. Anthony, shall continue to be completely interconnected.

9. Lockout Device. Upon the request of a Subscriber, Grantee shall make available a Lockout Device or similar functionality by software at no additional charge to Subscribers.

SECTION 5. SERVICE PROVISIONS

1. Regulation of Service Rates.

a. The City may regulate rates for the provision of Cable Service, equipment, or any other communications service provided over the System to the extent allowed under federal or state law(s). City/Commission reserves the right to regulate rates for any future services to the extent permitted by law.

b. Grantee shall give City and Subscribers written notice of any change in a rate or charge pursuant to the terms of by 47 CFR § 76.1603. Bills must be clear, concise, and understandable and compliant with applicable law.

2. Non-Standard Installations. Grantee shall install and provide Cable Service to any Person requesting other than a Standard Installation provided that said Cable Service can meet FCC technical specifications and all payment and policy obligations are met. In such case, Grantee may charge for the incremental increase in material and labor costs incurred beyond the Standard Installation.

3. Sales Procedures. Grantee shall not exercise deceptive sales procedures when marketing any of its services within City. In its initial communication or contact with a non-Subscriber, Grantee shall upon request inform the non-Subscriber of all levels of service available, including the lowest priced service tiers. Grantee shall have the right to market door-to-door during reasonable hours consistent with local ordinances and regulation.

4. Subscriber Inquiry and Complaint Procedures.

a. Grantee shall have a publicly listed toll-free telephone number which shall be operated so as to receive Subscriber complaints and requests on a twenty-four (24) hour-a-day, seven (7) days-a-week, 365 days a year basis. During normal business hours, trained representatives of Grantee shall be available to respond to Subscriber inquiries.

b. Grantee shall maintain adequate numbers of telephone lines and personnel to respond in a timely manner to schedule service calls and answer Subscriber complaints or inquiries in a manner consistent with regulations adopted by the FCC and City where applicable and lawful. Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time

under normal operating conditions, measured on a quarterly basis. Under normal operating conditions, the customer will receive a busy signal less than three (3) percent of the time. Grantee shall respond to written complaints forwarded by the City or its designee with copy to City or its designee within thirty (30) days.

c. Subject to Grantee's obligations pursuant to law regarding privacy of certain information, Grantee shall prepare and maintain written records of all complaints received from City and the resolution of such complaints, including the date of such resolution. Grantee shall provide City with a written summary of such complaints and their resolution upon request of City. As to Subscriber complaints, Grantee shall comply with FCC record-keeping regulations, and make the results of such record-keeping available to City upon request, subject to customer privacy obligations.

d. Subscriber requests for repairs shall be commenced and best efforts shall be used complete repairs within thirty-six (36) hours of the request or as otherwise scheduled with the customer unless conditions beyond the control of Grantee prevent such performance. Grantee may schedule appointments for Installations and other service calls either at a specific time or, at a maximum, during a four hour time block during normal business hours. Grantee may also schedule service calls outside normal business hours for the convenience of customers. Grantee shall use its best efforts to not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment. If the installer or technician is late and will not meet the specified appointment time, he/she must use his/her best efforts to contact the customer and reschedule the appointment at the sole convenience of the customer. Service call appointments must be met in a manner consistent with FCC standards.

5. Subscriber Contracts. Grantee shall file with City or provide an electronic link to any standard form Subscriber contract utilized by Grantee. If no such written contract exists, Grantee shall file with the City a document completely and concisely stating the length and terms of the Subscriber contract offered to customers. The length and terms of any Subscriber contract(s) shall be available for public inspection during normal business hours or made available electronically online.

6. Refund Policy. In the event a Subscriber establishes or terminates service and receives less than a full month's service, Grantee shall prorate the monthly rate on the basis of the number of days in the period for which service was rendered to the number of days in the billing.

7. Late Fees. Fees for the late payment of bills shall not be assessed until after the service has been fully provided and, as of the due date of the bill notifying Subscriber of an unpaid balance, the bill remains unpaid. Late Fees shall be nondiscriminatory, consistent with federal and state laws, including consumer protection laws, and uniform with respect to late fees commonly charged in other jurisdictions in the Twin Cities.

8. Office Policy. Grantee shall maintain a convenient location in or around a reasonable distance of the City or the Franchise territory encompassing any joint regulatory body of which City is a Member for receiving Subscriber inquiries and bill payments. The location must

be staffed by a person capable of receiving inquiries and bill payments. In addition, Grantee shall maintain a local drop box for receiving Subscriber payments after hours, or may make arrangements for third-party payment locations (for example, in a convenience store) and equipment drop-off locations (for example, UPS stores). Grantee may also offer electronic customer service options through its web page and phone applications.

SECTION 6. ACCESS CHANNEL(S) PROVISIONS

1. Public, Educational and Government Access.

a. City or its designee is hereby designated to operate, administer, promote, and manage access (public, education, and government programming) (hereinafter “PEG access”) programming on the Cable System.

b. Grantee shall dedicate 6 Standard Definition (“SD”) channels and 2 High Definition (“HD”) channels for PEG access (the “PEG Channels”). All Subscribers to Cable Service offered on the System shall be eligible to receive such channels at no additional charge. The PEG Channels shall be activated upon the effective date of this Franchise and thereafter maintained. City may rename, reprogram, or otherwise change the use of these channels in its sole discretion, provided such use is non-commercial, lawful, and retains the general purpose of the provision of community programming. Nothing herein shall diminish the City's rights to secure additional channels pursuant to Minn. Stat. § 238.084, which is expressly incorporated herein by reference. City shall provide ninety (90) days prior written notice to Grantee of City's intent to activate access channels to the extent the maximum number agreed to herein are not already active.

c. Each PEG Channel(s) required by this Section shall retain the channel designation/number it had as of the commencement of this Franchise term. Upon six (6) months’ notice to City, any access channel may be moved by Grantee, but in no event more than once every two (2) years unless otherwise allowed by City, provided Grantee pays all reasonable costs or expenses of the North Suburban Access Corporation (NSAC), or its successor, arising out of the channel move including, but not limited to, equipment necessary to effect the change at the programmer’s production or receiving facility (school frequency routing equipment, etc.), signage, letterhead, business cards, and reasonable marketing or other constituency notification costs up to a maximum of \$10,000. This paragraph shall not apply to Regional Channel 6.

d. Sixty (60) months after the Effective Date, upon written request of at least 90 days’ advance notice, Comcast will make available to the Commission an additional HD PEG channel on the cable system.

e. The content of the HD PEG channels is up to the Commission. The Commission may simulcast one or more of the existing PEG channels in HD and SD formats, or it may choose to provide subscribers an HD channel that is programmed differently than the existing SD PEG channels (for example, the Commission could create a “best of” HD PEG channel that carries a combination of HD public, educational and

government programming from the existing PEG Channels). If an HD PEG channel is programmed differently, Comcast would have no additional obligation to provide an SD simulcast of that channel.

f. Comcast will make available to the Commission the ability to place PEG Channel programming information on the interactive channel guide by putting the Commission in contact with the electronic programming guide vendor (“EPG provider”) that provides the guide service. Comcast will be responsible for providing the designations and instructions necessary to ensure the channels will appear on the programming guide throughout the jurisdictions that are part of the Commission and the costs of any necessary headend equipment associated therewith. The Commission shall be responsible for providing programming information to the EPG provider and for any costs charged by the EPG provider, unless Comcast is required to pay for PEG EPG costs per applicable law or national commitments. As part of this Franchise, Comcast is not agreeing to make detailed guide functionality available for periods where the Commission chooses to distribute different PEG programming via the same channel number (i.e. narrowcasting) to subscribers in different communities that are part of the Commission.

g. Comcast will deliver the SD/HD PEG channels to Subscribers so that it is viewable without degradation, provided that it is not required to deliver a PEG Channel at a resolution higher than the highest resolution used in connection with the delivery of local broadcast signals to the public. Comcast may implement SD/HD carriage of the PEG channel in any manner (including selection of compression, utilization of IP, and other processing characteristics) that produces a signal as accessible, functional, useable and of a quality comparable (meaning indistinguishable to the viewer) to broadcast SD/HD channels carried on the cable system.

h. The HD PEG channels will be assigned a number near the other high definition local broadcast stations if such channel positions are not already taken, or if that is not possible, near high definition news/public affairs programming channels if such channel positions are not already taken, or if not possible, as reasonably close as available channel numbering will allow. Grantee shall use its best efforts to group the HD PEG channels together in simultaneous order.

i. The City acknowledges that HD programming may require the viewer to have special viewer equipment (such as an HDTV and an HD-capable digital device/receiver), but any subscriber who can view an HD signal delivered via the cable system at a receiver shall also be able to view the HD PEG channels at that receiver, without additional charges or equipment. By agreeing to make PEG available in HD format, Comcast is not agreeing it may be required to provide free HD equipment to customers, nor modify its equipment or pricing policies in any manner.

j. Comcast will provide a bill message announcing the launch of the HD PEG Channels; however the City acknowledges that not all customers may receive the bill message notice in advance of the channel launch in the interests of launching the channel sooner.

2. Remote Cablecasting. Grantee shall provide at no charge to the City/Commission for the term of this Franchise and until it renews, three (3) “open” cable internet modems with a static IP addresses that can be connected and operational anywhere on the System and capable of transmitting live remote HD PEG programming to the City’s master control center for live cablecasting, using business-class internet service (currently 50 mbs download and 10 mbs upload) and three MPEG encoder/transmitters and one multi-channel receiver device (capable of receiving at least 3 remote video feeds) for the Commission’s Master Control.

3. PEG Streaming. Grantee agrees to include the PEG channels in its in-home streaming cable service application (currently Xfinity TV App). Grantee will use reasonable efforts to make the PEG channels available to Subscribers outside the home on its TV-TO-GO Application, or equivalent.

4. Equipment. 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 or Commission to obtain new equipment in order to be compatible with such change for purposes of transport and delivery of the Access Channels to the Grantee’s headend, Grantee shall, at its own expense and free of charge to the City, the Commission, or its designated entities, purchase such equipment as may be necessary to facilitate the cablecasting of the PEG Channels in accordance with the requirements of the Franchise.

5. Grantee Not Liable. Neither the Grantee nor the officers, directors, or employees of the Grantee is liable for any penalties or damages arising from programming content not originating from or produced by the Grantee and shown on any public access channel, education access channel, government access channel, leased access channel, or regional channel.

6. Charges for Use. There shall be no charge to the City for the use of the PEG Channels.

7. Access Rules. City, or its designee, shall implement rules for use of any access channel(s).

8. Access Support.

a. In addition to satisfying the other requirements of this Section, the Grantee is required to provide the following additional PEG use funding (as used in this Section), PEG access refers to the channels, facilities and equipment used in connection with the channels on the subscriber network and associated interconnections; PEG use includes PEG access and dark fiber network and PRISMA network use, including use in connection with the network provided pursuant to Section 7.2 (Additional Network Services) including Exhibit C:

b. The Grantee will provide the following capital grant for PEG use for so long as it continues to operate under this franchise: Payments of all grants under the 1994 MOU through December 31, 2017; commencing January 1, 2018, Grantee shall pay to City three

percent (3.0%) of its Gross Revenues paid quarterly based upon revenues for the calendar quarter. The first Gross Revenue payment shall be due on May 1, 2018, based on Gross Revenues for the quarter beginning January 1, 2018 and ending March 31, 2018, and thereafter, payments shall be due 30 days after the end of each calendar quarter, based on revenues for that quarter, or if the franchise should terminate or be revoked, 30 days after termination or revocation for any portion of quarter during which Grantee provided Cable Service.

c. Notwithstanding the foregoing requirements, if Grantee has a valid and binding sponsorship contract with an entity designated by the City/Commission to manage any public access channel, the City agrees that Grantee may offset any amount it pays under such contract against payments required above. Nothing in this section requires or shall be deemed to require Grantee to make any payment that constitutes a franchise fee under 47 U.S.C. § 542.

d. The parties agree that any cost to the Grantee associated with providing any support for PEG use required under this Franchise (including subscriber network drops and equipment and service to public institutions and the provision of the dark fiber network and PRISMA network and support for and payments made outside this franchise, if any), shall not be offset from the franchise fee.

e. Grantee may itemize the PEG fees on Subscribers' invoices in accordance with applicable law; provided, however, any PEG Fee charged to subscribers to recover PEG funding provided in 2017 shall not exceed \$6.00 per subscriber per month. Any supplementary PEG fee levied by Comcast after January 1, 2018, to recover past undercollections shall be set at 0.5% of cable Gross Revenues through December 31, 2019. Any excess recovery shall be paid to the Commission at the same time as the Franchise Fee payment.

9. Regional Channel 6. Grantee shall designate Channel 6 for uniform regional channel usage to the extent required by law.

10. State and Federal Law compliance. Satisfaction of the requirements of this Section 6 satisfies any and all of Grantee's state and federal law requirements of Grantee with respect to PEG access.

SECTION 7. NETWORKING PROVISIONS

1. Managed Network. The City and/or Commission has a need for a telecommunications network to connect certain government buildings in the North Suburban Territory for telecommunications services. Comcast or its Affiliate agrees to provide, operate, repair and maintain a managed telecommunications network to City and/or Commission for the Term of the Franchise in accordance with an executed Enterprise Services agreement, attached as **Exhibits B, B2, and B3**. The Enterprise Services agreement shall set forth the locations, service, monthly fees for service and all other material terms and conditions relative to Comcast's or its Affiliate's provision of services to the City. Where an executed Enterprise Services agreement conflicts

with any term or condition of this Section, the Enterprise Services agreement shall prevail; with the exception that in the event Grantee enters into a franchise or Enterprise Services agreement or similar agreement in the Twin Cities metropolitan area after the Effective Date of this Franchise that allow a city or group of cities to receive the same or similar services on terms, conditions and/or pricing that are more favorable (taking into account the agreement as a whole), Grantee agrees to make the pricing available immediately and make available the services within a reasonable period of time to the City and/or Commission under the same terms, conditions and/or pricing made available to the city or group of cities.

2. Additional Network Services. Comcast agrees to continue to make available to the City network facilities on the terms and conditions identified in **Exhibit C**.

SECTION 8. OPERATION AND ADMINISTRATION PROVISIONS

1. Administration of Franchise. The City Administrator or other designee shall have continuing regulatory jurisdiction and supervision over the System and the Grantee's operation under the Franchise. The City, or its designee, may issue such reasonable rules and regulations concerning the construction, operation and maintenance of the System as are consistent with the provisions of the Franchise and law.

2. Delegated Authority. The City may appoint a citizen advisory body or a Joint Powers Commission, or may delegate to any other body or Person authority to administer the Franchise and to monitor the performance of the Grantee pursuant to the Franchise. Grantee shall cooperate with any such delegatee of City.

3. Franchise Fee.

a. During the term of the Franchise, Grantee shall pay quarterly to City or its delegatee a Franchise Fee in an amount equal to five percent (5%) of its quarterly Gross Revenues, or such other amounts as are subsequently permitted by federal statute.

b. Any payments due under this provision shall be payable quarterly. The payment shall be made within thirty (30) days of the end of each of Grantee's fiscal quarters together with a report showing the basis for the computation.

c. All amounts paid shall be subject to audit and recomputation by City and acceptance of any payment shall not be construed as an accord that the amount paid is in fact the correct amount.

i. If an audit or review discloses an overpayment or underpayment of franchise fees, the City and/or the Commission shall notify Comcast of such overpayment or underpayment. The City's/Commission's audit or review expenses shall be borne by the City/Commission unless the audit or review determines that the payment to the City should be increased by more than five percent (5%) in the audited/reviewed period, in which case the costs of the audit/review shall be borne by Comcast, up to a cap of \$25,000 for all

current members of the Commission collectively, as a cost incidental to the enforcement of the Franchise. Any additional amounts due to the City as a result of the audit or review shall be paid to the City within thirty (30) days following written notice to Comcast by the City/Commission of the underpayment, which notice shall include a copy of the audit/review report. If the recomputation results in additional revenue to be paid to the City, such amount shall be subject to a ten percent (10%) annual interest charge.

- ii. The City/Commission shall have the right to inspect and to require Comcast to provide any and all data, documents and records maintained by Comcast (or maintained by an Affiliate or a third-party contractor/vendor on behalf of Comcast) reasonably related to the calculation and payment of franchise fees. The Grantee shall maintain such records, documents and data for a minimum of four (4) years. Such records include, but are not limited to, those set forth in Paragraph 6 of the March 1, 2012, Settlement Agreement (attached hereto as Exhibit D).
- iii. Comcast shall have no less than twenty (20) business days to respond fully and completely to any written request for data, documents and records issued by the City/Commission, unless an extension of time is granted by the City/Commission in writing. Comcast may request an extension of the twenty (20) business day deadline applicable to a written request for data, information and documents no later than ten (10) business days after the date of such request. Every request for an extension of time shall describe, in detail, the reasons the extension is necessary. The City/Commission may, in its sole discretion, grant or deny an extension request, and shall act reasonably in making such a determination based on the scope and complexity of the information request at issue and the facts cited by Comcast in its written extension request.
- iv. In the event any franchise fee payment or recomputation amount is not made on or before the required date, Comcast shall pay, during the period such unpaid amount is owed, the additional compensation and interest charges computed from such due date, at an annual rate of ten percent (10%).
- v. Nothing in this Franchise shall be construed to limit any authority of the City to impose any tax, fee or assessment of general applicability.
- vi. The franchise fee payments required by this Franchise shall be in addition to any and all taxes or fees of general applicability. Comcast shall not have or make any claim for any deduction or other credit of all or any part of the amount of said franchise fee payments from or against any of said taxes or fees of general applicability, except as expressly permitted by law. Comcast shall not apply nor seek to apply all or any part of the amount of said franchise fee payments as a deduction or other credit from or against any of said taxes or fees of general applicability, except as expressly permitted by

law. Nor shall Comcast apply or seek to apply all or any part of the amount of any of said taxes or fees of general applicability as a deduction or other credit from or against any of its franchise fee obligations, except as expressly permitted by law.

- vii. Comcast shall ensure that persons or entities that only subscribe to non-cable service (*e.g.*, persons who subscribe only to high-speed Internet access, telephone service, alarm monitoring, or a combination of services that does not include cable service) are not assessed cable service franchise fees on ancillary charges imposed by Comcast on such subscribers, including but not limited to late fees, convenience fees and non-sufficient funds (NSF) charges, unless the imposition of cable service franchise fees is permitted by applicable laws or regulations.

4. Access to Records. The City/Commission shall have the right to inspect, upon reasonable notice and during normal business hours, or require Grantee to provide within a reasonable time copies of any records maintained by Grantee which relate to System operations including specifically Grantee's accounting and financial records and which are reasonably necessary for determining compliance with this Agreement.

5. Reports and Maps to be Filed with City.

a. Grantee shall file with the City/Commission, at the time or payment of the Franchise Fee, a report of all Gross Revenues in form and substance as required by City/Commission, an example of which is attached hereto as **Exhibit E**.

b. Grantee shall prepare and furnish to City/Commission, at the times and in the form prescribed, such other reasonable reports with respect to Grantee's operations pursuant to this Franchise as City/Commission may require provided that such reports shall be consistent with the way Grantee maintains the information in the ordinary course of business, all requests are reasonably and directly related to the enforcement of this Agreement, all produced information is subject to an acceptable confidentiality agreement, and Grantee shall have no less than 20 business days to produce such information with further extensions reasonably granted as needed based on the nature of the request.

c. If required by City/Commission, Grantee shall furnish to and file with City/Commission the maps, plats, and permanent records of the location and character of all facilities constructed, including underground facilities, and Grantee shall file with City/Commission updates of such maps, plats and permanent records annually if changes have been made in the System.

6. Periodic Evaluation.

a. The City/Commission may require evaluation sessions at any time during the term of this Franchise, upon fifteen (15) days written notice to Grantee, but no frequently than one every twenty-four (24) months.

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

c. As a result of a periodic review or evaluation session, Grantee and the City may agree to modifications of the terms and conditions of the Franchise.

SECTION 9. DISPUTE RESOLUTION

1. Performance Bond.

a. At the time the Franchise becomes effective and at all times thereafter, until the Grantee has liquidated all of its obligations with City, the Grantee shall furnish a bond to City in the amount of \$500,000.00 in a form and with such sureties as reasonably acceptable to City (attached hereto as **Exhibit F**). 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 City which arise by reason of the construction, operation, or maintenance of the System. The rights reserved by City with respect to the bond are in addition to all other rights City may have under the Franchise or any other law. City may, from year to year, in its sole discretion, reduce the amount of the bond. To the extent the City is a member of the Commission a single bond of \$500,000 will cover all member cities of the Commission.

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

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

d. Grantee shall be entitled to the cancellation or return of the performance bond, or portion thereof, as remains sixty (60) days after the expiration of the term of the

Franchise or revocation for default thereof, provided City has not notified Grantee of any actual or potential damages incurred as a result of Grantee's operations pursuant to the Franchise or as a result of said default.

e. The rights reserved to City with respect to the performance bond are in addition to all other rights of City whether reserved by this Franchise or authorized by law, and no action, proceeding or exercise of a right with respect to the performance bond shall affect any other right City may have.

2. Letter of Credit and Liquidated Damages.

a. At the time of acceptance of this Franchise, Grantee shall deliver to City an irrevocable and unconditional Letter of Credit, in form and substance acceptable to City, from a National or State bank approved by City, in the amount of \$25,000.00.

b. The Letter of Credit shall provide that funds will be paid to City, upon written demand of City, and in an amount solely determined by City in payment for penalties charged pursuant to this Section, in payment for any monies owed by Grantee to City or any person pursuant to its obligations under this Franchise, or in payment for any damage incurred by City or any person as a result of any acts or omissions by Grantee pursuant to this Franchise.

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

- i. For failure to provide data, documents, reports or information or to cooperate with City during an application process or system review or as otherwise provided herein, the penalty shall be \$250.00 per day for each day, or part thereof, such failure occurs or continues.
- ii. Fifteen (15) days following notice from City of a failure of Grantee to comply with construction, operation or maintenance standards, the penalty shall be \$500.00 per day for each day, or part thereof, such failure occurs or continues.
- iii. For failure to provide the services Grantee has proposed, including, but not limited to, the implementation and the utilization of the access channels and the maintenance and/or replacement of the equipment and other facilities, the penalty shall be \$500.00 per day for each day, or part thereof, such failure occurs or continues.
- iv. For Grantee's breach of any written contract or agreement with or to the City or its designee, the penalty shall be \$500.00 per day for each day, or part thereof, such breach occurs or continues.

- v. For failure to comply with any of the provisions of this Franchise, or other City ordinance for which a penalty is not otherwise specifically provided pursuant to this paragraph c, the penalty shall be \$250.00 per day for each day, or part thereof, such failure occurs or continues.
- d. Each violation of any provision of this Franchise shall be considered a separate violation for which a separate penalty can be imposed.
- e. Whenever City finds that Grantee has violated one or more terms, conditions or provisions of this Franchise, or for any other violation contemplated in Subparagraph c. above, a written notice shall be given to Grantee informing it of such violation. At any time after thirty (30) days (or such longer reasonable time which, in the sole determination of City, is necessary to cure the alleged violation) following local receipt of notice, provided Grantee remains in violation of one or more terms, conditions or provisions of this Franchise, in the sole opinion of City, City may draw from the Letter of Credit all penalties and other monies due City from the date of the local receipt of notice.
- f. Whenever the Letter of Credit is drawn upon, Grantee may, within seven (7) days of such draw, notify City in writing that there is a dispute as to whether a violation or failure has in fact occurred. Such written notice by Grantee to City shall specify with particularity the matters disputed by Grantee. All penalties shall continue to accrue and City may continue to draw from the Letter of Credit during any appeal pursuant to this subparagraph.
- i. City shall hear Grantee's dispute within sixty (60) days and render a final decision within sixty (60) days thereafter.
- ii. Upon the determination of City that no violation has taken place, City shall refund to Grantee, without interest, all monies drawn from the Letter of Credit by reason of the alleged violation.
- g. If said Letter of Credit or any subsequent Letter of Credit delivered pursuant thereto expires prior to thirty (30) months after the expiration of the term of this Franchise, it shall be renewed or replaced during the term of this Franchise to provide that it will not expire earlier than thirty (30) months after the expiration of this Franchise. The renewed or replaced Letter of Credit shall be of the same form and with a bank authorized herein and for the full amount stated in paragraph 2(a) of this Section.
- h. If City draws upon the Letter of Credit or any subsequent Letter of Credit delivered pursuant hereto, in whole or in part, Grantee shall replace or replenish to its full amount the same within ten (10) days and shall deliver to City a like replacement Letter of Credit or certification of replenishment for the full amount stated in Section 9.2(a) (Letter of Credit and Liquidated Damages) as a substitution of the previous Letter of Credit. This shall be a continuing obligation for any draws upon the Letter of Credit.

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

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

3. Indemnification of City.

a. City, its officers, boards, committees, commissions, elected officials, employees and agents shall not be liable for any loss or damage to any real or personal property of any Person, or for any injury to or death of any Person, arising out of or in connection with 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 City, its officers, boards, committees, commissions, elected officials, employees and agents, from and against all liability, damages, and penalties which they may legally be required to pay as a result of the City's exercise, administration, or enforcement of the Franchise.

c. Nothing in this Franchise relieves a Person, except City, from liability arising out of the failure to exercise reasonable care to avoid injuring the Grantee's facilities while performing work connected with grading, regarding, or changing the line of a Right-of-Way or public place or with the construction or reconstruction of a sewer or water system.

d. Grantee shall contemporaneously with this Franchise execute an Indemnity Agreement in the form of **Exhibit G**, which shall indemnify, defend and hold the City and Commission harmless for any claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and reasonable attorneys' fees or reasonable expenses arising out of the actions of the City and/or Commission in renewal of this Franchise. The term of the Indemnity Agreement shall not exceed 180 days' from the Effective Date of this Franchise, unless the City or Commission has received statutory notice of a claim based upon the renewal of this Franchise. This obligation includes any claims by another franchised cable operator against the City and/or Commission that the terms and conditions of this Franchise are less burdensome than another franchise granted by the City or that this Franchise does not satisfy the requirements of applicable state law(s).

4. Insurance.

a. As a part of the indemnification provided in Section 9.3 (Indemnification of City), but without limiting the foregoing, Grantee shall file with City at the time of its acceptance of this Franchise, and at all times thereafter maintain in full force and effect at its sole expense, a comprehensive general liability insurance policy, including broadcaster's/cablecaster's liability and contractual liability coverage, in protection of the Grantee, and the City, its officers, elected officials, boards, commissions, agents and employees for any and all damages and penalties which may arise as a result of this Franchise. The policy or policies shall name the City as an additional insured, and in their capacity as such, City officers, elected officials, boards, commissions, agents and employees.

b. The policies of insurance shall be in the sum of not less than \$1,000,000.00 for personal injury or death of any one Person, and \$2,000,000.00 for personal injury or death of two or more Persons in any one occurrence, \$500,000.00 for property damage to any one person and \$2,000,000.00 for property damage resulting from any one act or occurrence.

c. The policy or policies of insurance shall be maintained by Grantee in full force and effect during the entire term of the Franchise. Each policy of insurance shall contain a statement on its face that the insurer will not cancel the policy or fail to renew the policy, whether for nonpayment of premium, or otherwise, and whether at the request of Grantee or for other reasons, except after sixty (60) days advance written notice have been provided to City.

SECTION 10. SALE, ABANDONMENT, TRANSFER AND REVOCATION OF FRANCHISE

1. City's Right to Revoke.

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

- i. Grantee has violated material provisions(s) of this Franchise; or
- ii. Grantee has practiced fraud or deceit upon City.

City may enforce its rights and seek any and all relief allowed under applicable law if Grantee is adjudged a bankrupt.

2. Procedures for Revocation.

a. City shall provide Grantee with written notice of a cause for revocation and the intent to revoke and shall allow Grantee thirty (30) days subsequent to receipt of the notice in which to correct the violation or to provide adequate assurance of performance in

compliance with the Franchise. In the notice required herein, City shall provide Grantee with the basis of the revocation.

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

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

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

3. Abandonment of Service. Grantee may not abandon the System or any portion thereof without having first given three (3) months written notice to City. Grantee may not abandon the System or any portion thereof without compensating City for damages resulting from the abandonment, including all costs incident to removal of the System.

4. Removal After Abandonment, Termination or Forfeiture.

a. In the event of termination or forfeiture of the Franchise or abandonment of the System, City shall have the right to require Grantee to remove all or any portion of the System from all Rights-of-Way and public property within City, unless Grantee is offering other services (such as telecommunication services) over the System and has or obtains the necessary authorizations to occupy the rights-of-way for such purposes.

b. If Grantee is not providing other lawful services over the System with the necessary authorizations and 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 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 System to be in City with all rights of ownership including, but not limited to, the right to operate the System or transfer the System to another for operation by it.

5. Sale or Transfer of Franchise.

a. No sale or transfer of the Franchise, or sale, transfer, or fundamental corporate change of or in Grantee, including, but not limited to, a fundamental corporate change in Grantee's parent corporation or any entity having a controlling interest in Grantee, the sale of a controlling interest in the Grantee's assets, a merger including the

merger of a subsidiary and parent entity, consolidation, or the creation of a subsidiary or affiliate entity, shall take place until a written request has been filed with City requesting approval of the sale, transfer, or corporate change and such approval has been granted or deemed granted, provided, however, that said approval shall not be required where Grantee grants a security interest in its Franchise and/or assets to secure an indebtedness. The foregoing notwithstanding, Grantee must seek approval of any transaction constituting a transfer under state law.

b. Any sale, transfer, exchange or assignment of stock in Grantee, or Grantee's parent corporation or any other entity having a controlling interest in Grantee, so as to create a new controlling interest therein, shall be subject to the requirements of this Section 10.5. The term "controlling interest" as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised. In any event, as used herein, a new "controlling interest" shall be deemed to be created upon the acquisition through any transaction or group of transactions of a legal or beneficial interest of fifteen percent (15%) or more by one Person. Acquisition by one Person of an interest of five percent (5%) or more in a single transaction shall require notice to City. This requirement shall not apply to transactions involving the acquisition of a non-Cable Service business, movie studio, or other such business venture by Grantee's parent company).

c. The Grantee shall file, in addition to all documents, forms and information required to be filed by applicable law, the following subject to reasonable confidentiality agreements, if necessary:

- i. All contracts, agreements or other documents that constitute the proposed transaction and all exhibits, attachments, or other documents referred to therein which are necessary in order to understand the terms thereof.
- ii. A list detailing all public documents filed with any state or federal agency related to the transaction including, but not limited to, the MPUC, the FCC, the FTC, the FEC, the SEC or MnDOT. Upon request, Grantee shall provide City with a complete copy of any such document; and
- iii. Any other documents or information related to the transaction as may be specifically requested by the City which are necessary in order to understand the terms thereof.

d. City shall have such time as is permitted by federal law in which to review a transfer request.

e. The Grantee shall reimburse City for all the legal, administrative, and consulting costs and fees associated with the City's review of any request to transfer. Nothing herein shall prevent Grantee from negotiating partial or complete payment of such costs and fees by the transferee. Grantee may not itemize any such reimbursement on Subscriber bills, but may recover such expenses in its subscriber rates.

f. In no event shall a sale, transfer, corporate change, or assignment of ownership or control pursuant to subparagraph (a) or (b) of this Section be approved without the transferee becoming a signatory to this Franchise and assuming all rights and obligations thereunder, and assuming all other rights and obligations of the transferor to the City including, but not limited to, any adequate guarantees or other security instruments provided by the transferor.

g. In the event of any proposed sale, transfer, corporate change, or assignment pursuant to subparagraph (a) or (b) of this Section, City shall have the right to purchase the System for the value of the consideration proposed in such transaction. City's right to purchase shall arise upon City's receipt of notice of the material terms of an offer or proposal for sale, transfer, corporate change, or assignment, which Grantee has accepted. Notice of such offer or proposal must be conveyed to City in writing and separate from any general announcement of the transaction.

h. City shall be deemed to have waived its right to purchase the System pursuant to this Section only in the following circumstances:

- i. If City does not indicate to Grantee in writing, within sixty (60) days of receipt of written notice of a proposed sale, transfer, corporate change, or assignment as contemplated in Section 10.5 (g) above, its intention to exercise its right of purchase; or
- ii. It approves the assignment or sale of the Franchise as provided within this Section.

i. No Franchise may be transferred if City determines 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 even if such issues predated the approval, whether known or unknown to City.

SECTION 11. PROTECTION OF INDIVIDUAL RIGHTS

1. **Discriminatory Practices Prohibited.** Grantee shall not deny service, deny access, or otherwise discriminate against Subscribers (or group of potential subscribers) or general citizens on the basis of race, color, religion, national origin, sex, age, status as to public assistance, affectional preference, or disability. Grantee shall comply at all times with all other applicable federal, state, and city laws, and all executive and administrative orders relating to nondiscrimination.
2. **Subscriber Privacy.** Grantee shall comply with all customer privacy obligations under applicable law.

SECTION 12. UNAUTHORIZED CONNECTIONS AND MODIFICATIONS

1. **Unauthorized Connections or Modifications Prohibited.** It shall be unlawful for any firm, Person, group, company, corporation, or governmental body or agency, without the express consent of the Grantee, to make or possess, or assist anybody in making or possessing, any unauthorized connection, extension, or division, whether physically, acoustically, inductively, electronically or otherwise, with or to any segment of the System or receive services of the System without Grantee's authorization.
2. **Removal or Destruction Prohibited.** It shall be unlawful for any firm, Person, group, company, or corporation to willfully interfere, tamper, remove, obstruct, or damage, or assist thereof, any part or segment of the System for any purpose whatsoever, except for any rights City may have pursuant to this Franchise or its police powers.
3. **Penalty.** Any firm, Person, group, company, or corporation found guilty of violating this section may be fined not less than Twenty Dollars (\$20.00) and the costs of the action nor more than Five Hundred Dollars (\$500.00) and the costs of the action for each and every subsequent offense. Each continuing day of the violation shall be considered a separate occurrence.

SECTION 13. MISCELLANEOUS PROVISIONS

1. **Franchise Renewal.** Any renewal of this Franchise shall be performed in accordance with applicable federal, state and local laws and regulations.
2. **Work Performed by Others.** All applicable obligations of this Franchise shall apply to any subcontractor or others performing any work or services pursuant to the provisions of this Franchise, however, in no event shall any such subcontractor or other performing work obtain any rights to maintain and operate a System or provide Cable Service. Grantee shall provide notice to City of the name(s) and address(es) of any entity, other than Grantee, which performs substantial services in the City pursuant to this Franchise.
3. **Amendment of Franchise Ordinance.** Grantee and City may agree, from time to time, to amend this Franchise. Such written amendments may be made subsequent to a review

session pursuant to Section 8.6 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.

4. 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 year after they become effective, unless otherwise stated, and to conform to federal laws and regulations regarding cable as they become effective.

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

5. Nonenforcement by City. Grantee shall not be relieved of its obligations to comply with any of the provisions of this Franchise by reason of any failure or delay of City to enforce prompt compliance. City may only waive its rights hereunder by expressly so stating in writing. Any such written waiver by City of a breach or violation of any provision of this Franchise shall not operate as or be construed to be a waiver of any subsequent breach or violation.

6. 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.

7. Grantee Acknowledgment of Validity of Franchise. Grantee acknowledges that it has had an opportunity to review the terms and conditions of this Franchise and that under current

law Grantee believes that said terms and conditions are not unreasonable or arbitrary, and that Grantee believes City has the power to make the terms and conditions contained in this Franchise.

8. 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. This provision does not apply to the Commission or the NSAC.

SECTION 14. PUBLICATION EFFECTIVE DATE; ACCEPTANCE AND EXHIBITS

1. Publication: Effective Date. This Franchise shall be published in accordance with applicable local and Minnesota law. The Effective Date of this Franchise shall January 1, 2017.

2. Acceptance.

a. Grantee shall accept this Franchise within sixty (60) of its enactment by the City Council, unless the time for acceptance is extended by City. Such acceptance by the Grantee shall be deemed the grant of this Franchise for all purposes provided, however, this Franchise shall not be effective until all City ordinance adoption procedures are complied with and all applicable timelines have run for the adoption of a City ordinance. In the event acceptance does not take place, or should all ordinance adoption procedures and timelines not be completed, this Franchise and any and all rights granted hereunder to Grantee shall be null and void.

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

c. Grantee shall accept this Franchise in the following manner:

i. This Franchise will be properly executed and acknowledged by Grantee and delivered to City.

ii. With its acceptance, Grantee shall also deliver any grant payments, performance bond and insurance certificates required herein that have not previously been delivered.

Passed and adopted this _____ day of _____, 2017.

ATTEST:

CITY OF NORTH OAKS

By: _____
Its: _____

By: _____
Its: _____

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

COMCAST OF MINNESOTA, INC.

Dated: _____

By: _____

Its: _____

Exhibit A – Drops to Designated Buildings

Exhibit B – Comcast Enterprise Services Master Services Agreement (MSA)

Exhibit B2 – First Amendment to Comcast Enterprise Services Master Agreement

Exhibit B3 - Comcast Enterprise Services General Terms and Conditions

Exhibit C – Existing Network Facilities

Exhibit C – Schedule C-1 – Dark Fiber Connections

Exhibit C – Schedule C-2 – PEG Origination Points

Exhibit D – March 1, 2012, Settlement Agreement

Exhibit E – Sample Gross Revenues Report

Exhibit F – Performance Bond

Exhibit G – Indemnification Agreement