

ORDINANCE 24-028

AN ORDINANCE GRANTING A FRANCHISE TO MEDIACOM MINNESOTA LLC TO CONSTRUCT, OPERATE, AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE CITY OF BROOKINGS, SOUTH DAKOTA, SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM; AND PRESCRIBING PENALTIES FOR THE VIOLATION OF ITS PROVISIONS.

The City Council of the City of Brookings ordains:

STATEMENT OF INTENT AND PURPOSE

The City intends, by the adoption of this Franchise, to bring about the development of a Cable Television System, and the continued operation of it. Such a development shall contribute significantly to the communication needs and desires of many.

FINDINGS

In the review of the application of Mediacom Minnesota LLC ("Grantee"), and as a result of a public hearing, the City Council makes the following findings:

1. The Grantee's technical ability, financial condition, legal obligations, 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 acceptable 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 state and federal laws and regulations.

SECTION 1.

SHORT TITLE AND DEFINITIONS

Short Title. This Franchise Ordinance shall be known and cited as the Mediacom Minnesota LLC Cable Television Franchise Ordinance or as the Franchise Agreement.

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.

"Basic Cable Service" means any Cable Service tier that includes the lawful retransmission of local television broadcast signals and any Public, Educational, and

Governmental Access programming required by this Ordinance or a Franchise Agreement to be carried on the basic tier. Basic Cable Service as defined herein shall be consistent with 47 U.S.C. § 543(b)(7) (1997), as may from time to time be amended.

"Cable Act" means the Cable Communications Policy Act of 1984, Pub. L. No. 98-549, (codified at 47 U.S.C. §§ 521-611 (1982 & Supp. V. 1987) as amended by the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, and the Telecommunications Act of 1996, Pub. L. No. 104-104 (1996) as may, from time to time, be amended.

"Cable Service" or "Service" means:

- A. The transmission to Subscribers of video programming or Other Programming Service; and
- B. Subscriber interaction, if any, that is required for the selection or use of such video programming or Other Programming Service;

"Cable Television System" or "Cable System" means 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 to multiple Subscribers within the Franchise Area, but such term does not include:

- A. A facility that serves only to retransmit via broadcast the television signals of one 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 Title II of the Communications Act of 1934, as it may be amended, except that such facility shall be considered a Cable System to the extent such facility, whether on a common carrier basis or otherwise, 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 § 653 of the Telecommunications Act; and
- E. Any facilities of any electric utility used solely for operating its electric utility System.

"Capital Costs" means costs associated with assets, including but not limited to equipment and facilities, that will provide Service for more than one year, whether incurred during initial construction or throughout the life of a System.

"Channel" means a portion of the frequency spectrum that is used in a Cable System and which is capable of delivering a television Channel as defined by the Federal Communications Commission.

"City" means the City of Brookings, South Dakota. The City is sometimes also referred to as "Grantor" in this Franchise Ordinance.

"Community Access Corporation" or "CAC" means a non-profit Access Corporation serving the City, its assignees or delegees, whose duties shall include the management, and programming of the PEG Access Channels.

"Complaint" means any written, faxed or electronic inquiry, allegation, or assertion made by a Person regarding Service. While "Complaint" does not include oral complaints, Grantee shall use reasonable efforts to log oral complaints it receives and shall not be obligated to provide verbatim reports or transcripts of oral complaints provided the nature of the complaint is adequately provided to the City if requested by City.

"Converter" means an electronic device that converts signals to a frequency not susceptible to interference within the television receiver of a Subscriber and, through the use of an appropriate Channel selector, permits a Subscriber to view all authorized Subscriber signals delivered at designated converter dial locations.

"Council" means the City Council of Brookings, South Dakota.

"Drop" means the cable or cables that connect the users of the System to the distribution System.

"Educational Access Facilities" means:

- A. Channel capacity designated for non-commercial educational access programming use; and
- B. Facilities and equipment for the use of such capacity.

"Effective Date" means the date a Franchise becomes effective in accordance with the Franchise and the rules and procedures of the City.

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

"Franchise" means the rights and obligations extended by the City to a Person to own, lease, construct, maintain, or operate a Cable System in the Right-of-Way within the Franchise Area for the purpose of providing Cable Services. Any such authorization, in whatever form granted, shall not mean or include: (i) any other permit or authorization required for the privilege of transacting and carrying on a business within the City required by the ordinances and laws of the City; (ii) any permit, agreement, or authorization required in connection with operations in the Right-of- Way including, without limitation, permits and agreements for placing devices on or in poles, conduits, or other structures, whether owned by the City or a private entity, or for excavating or performing other work in or along the Right-of-Way.

"Franchise Agreement" means a Franchise granted pursuant to this Ordinance.

"Franchise Area" means the telecommunications territory as currently on file with the

South Dakota Public Utilities Commission, and as such territory is modified subsequent to the adoption of this Franchise Agreement.

"Franchise Fee" means any tax, fee, or assessment of any kind imposed by the City or other governmental entity on a Grantee or Cable Subscriber, or both, solely because of its status as such. The term "Franchise Fee" does not include: (i) any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their services but not including a tax, fee, or assessment that is unduly discriminatory against cable operators or cable Subscribers); (ii) Capital Costs that are required by a Franchise Agreement to be incurred by a Grantee for PEG Access Facilities; (iii) requirements or charges incidental to the awarding or enforcing of a Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or (iv) any fee imposed under Title 17 of the United States Code.

"Government Access Facilities" means:

- A. Channel capacity designated for non-commercial governmental access programming use; and
- B. Facilities and equipment for the use of such channel capacity.

"Grantee" means Mediacom Minnesota LLC, its agents and employees, lawful successors, transferees or assignees.

"Grantor" means the City and its successors or delegates.

"Gross Revenues" means any revenue derived directly or indirectly by a Grantee from the operation of its Cable System to provide Cable Service, within the Franchise Area, other than Internet Access Service or telecommunications services, each as defined under federal law, or other services for which the Grantee is subject to a separate franchise ordinance. Gross Revenues shall include "pay" cable service fees charged to customers within the Franchise area.

The term "Gross Revenues" does not include taxes on Services furnished by Grantee and imposed by any municipality, state, or other governmental unit and collected by Grantee for such governmental unit. (e.g. tax on the Franchise Fee) In addition, the FCC User Fee is not included in Gross Revenue. Fees for Internet Access Service shall not be included in Gross Revenues unless in accordance with applicable law such service may be subject to local franchise fees.

It is understood and agreed that the Grantee operates other telecommunications services within the City of Brookings. Gross revenues, as defined in this paragraph, pertain to only revenue derived by the Grantee from the operation of its cable system and not from any other telecommunications service or Internet Access Service Grantee offers in the City of Brookings. Specifically, Gross Revenues include all recurring video revenues including revenue from packaged video offerings both residential and commercial, the video portion of bundled services that include other

telecommunication services, , premium video services, music packages, specialized equipment used in multiple dwelling units, and fees charged to video customers who do not have additional telecommunications services with Mediacom Minnesota LLC.

"Internet Access Service" unless determined otherwise under applicable law, means a service that enables users to access content, information, electronic mail, or other services offered over the Internet, and may also include access to proprietary content, information, and other services as part of a package of services offered to consumers, unless applicable Federal law determines that proprietary content provided over the Internet is a cable service. See 47 U.S.C. §231(e)(4).

"Lockout Device" means a mechanical or electrical accessory to a Subscriber's terminal that inhibits the 3video or audio portions of a certain program or certain Channel(s) provided by way of a Cable System.

"Normal Business Hours" means, unless otherwise defined in a Franchise Agreement, those hours during which the Grantee's business is open in Brookings to serve its telecommunications customers.

"Normal Operating Conditions" means any and all service and operational situations or conditions that are ordinarily within the control of a Grantee, including but not limited to, special promotions; pay-per-view events; rate increases; regular peak or seasonal demand periods; and maintenance, repair or upgrade of the Cable System, and any associated computer or software systems. Those conditions that are not within the control of a Grantee including but not limited to, natural disasters; civil disturbances; power outages; telephone network outages; and severe or unusual weather conditions.

"Other Programming Service" means information that a Grantee makes available to all Subscribers generally.

"Person" means any corporation, partnership, proprietorship, individual, organization, governmental entity or any natural person.

"Public Access Facilities" means:

- A. Channel capacity designated for non-commercial public access programming use; and
- B. Facilities and equipment necessary for the use of such channel capacity.

"Resident" means any Person residing in the City.

"Service Interruption" means the loss of picture, sound, or data on one or more cable Channels on the System, or the degradation of the picture and/or sound quality on such Channels to the extent that the subscriber is unable to use the signals.

"Standard Installation" means any Service installation that can be completed using a

Drop of one hundred twenty-five (125) feet or less, unless otherwise agreed to in the Franchise Agreement.

"Street" means the surface of, and the space above and below, any public street, road or highway, sidewalk, easement or right-of-way now or hereafter held by City.

"Subscriber" means any Person that lawfully elects to subscribe to Cable Service provided by a Grantee by means of, or in connection with, the Cable System.

"System" means a Grantee's Cable System operated pursuant to a Franchise Agreement within the Franchise Area.

SECTION 2.

GRANT OF AUTHORITY AND GENERAL PROVISIONS

1. Grant. A Cable Television Franchise is hereby granted to Mediacom Minnesota LLC, subject to the terms and conditions of this Franchise Agreement (hereinafter also referred to as the "Agreement"). The Agreement provides Grantee with the authority, right and privilege, to construct, reconstruct, operate and maintain a Cable Television System and to provide cable service and any other cable services permitted by this Franchise or applicable law within the Streets in the City as it is now or may in the future be constituted. This Franchise does not prohibit or grant any franchise rights concerning the provision of Internet Access Services or "telecommunications services" which is defined as:

"the offering of telecommunications" for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used."

2. Effective Date of This Franchise. This Franchise shall be effective on the date that both parties have executed this Franchise Agreement, provided that said date is no later than sixty (60) days after the date that the City Council, by resolution, approves this Franchise Agreement. The Franchise is further contingent upon the filing by Grantee with the City Clerk, of the executed Franchise Agreement and the required insurance certificates, except that if the filing of any such insurance certificate does not occur within sixty (60) days after the effective date of the resolution approving this Franchise Agreement and any extension of time hereunder, the Grantor may declare this Franchise Agreement null and void.

3. Franchise Required. It shall be unlawful for any Person to construct, operate or maintain a Cable Television System in City unless such Person or the Person for whom such action is being taken shall have first obtained and shall currently hold a valid Franchise Agreement. It shall also be unlawful for any Person to provide Cable Service in City unless such Person shall have first obtained and shall currently hold a valid Franchise Agreement.

4. Governing Requirements. Grantee shall comply, with all lawful requirements of this Franchise Agreement and applicable State and Federal law.

5. Grant of Nonexclusive Franchise.

(a) The Grantee shall have the right and privilege to construct, erect, operate, and maintain, in, upon, along, across, above, over and under any public street, road or highway, sidewalk, easement or right-of-way now laid out or dedicated and all extensions thereof, and additions thereto in City, poles, wires, cables, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation in City of a Cable Television System as herein defined.

(b) This Franchise shall not be construed as any limitation upon the right of Grantor, through its proper offices, and in accordance with applicable law, to grant to other qualified Persons or corporations rights, privileges or authority similar to the rights, privileges and authority herein set forth, in the same or other Streets the Grantee is entitled to occupy by this Franchise Agreement, permit or otherwise; provided, however, that such additional grants shall not operate to materially modify, revoke or terminate any rights granted to Grantee herein.

6. Franchise Term. This Franchise shall be in effect for a period of ten (10) years from the effective date, unless renewed, revoked, terminated, shortened or extended as herein provided.

7. Previous Franchises. Intentionally deleted.

8. Rules of Grantee. 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.

9. Franchise Area. This Franchise is granted for the area defined in Grantee's Geographical Coverage area (defined in Franchise Area and in Section 10. below), as it exists from time to time.

10. Geographical Coverage.

(a) Grantee shall design, construct and maintain the Cable Television System to have the capability to pass every dwelling unit within the Grantee's telecommunications territory as currently on file with the South Dakota Public Utilities Commission, and subject to any line extension requirements of the Franchise Agreement

(b) After service has been established by activating trunk and/or distribution cables for any part of the City, Grantee shall provide Cable Service to any requesting Subscriber provided the Service Installation can be completed using a Drop of One Hundred Twenty-five Feet (125') or less and provided the requesting Subscriber resides within the City, within thirty (30) days from the date of request, provided that the Grantee is able to secure all rights-of-

way necessary to extend service to such Subscriber within such thirty (30) day period on reasonable terms and conditions.

11. 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 to the City Manager of the City of Brookings, 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 Brookings
Attn: City Manager
520 3rd St., Suite 230
Brookings, South Dakota 57006

If to Grantee: Mediacom Minnesota LLC
Government Relations Director
1504 2nd Street SE
Waseca, MN 56093

With a copy to: Mediacom Communications
Legal Department
One Mediacom Way
Mediacom Park, NY 10918

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

12. Public, Educational or Government Access Facilities.

(a) Grantee shall make available to each of its subscribers who receive some or all of the Cable Services offered on the System, reception of at least two (2) access channels, which shall be used for noncommercial purposes as follows:

- (1) Educational access;
- (2) Government access;

The channels designated for access shall be provided by Grantee as a part of the basic cable service. The access channels shall be made available by Grantee for use by the City and its citizens in accordance with the rules and procedures established by the City or any lawfully designated person, group, organization or agency authorized by the City for that purpose.

(b) In addition, Grantee shall dedicate a third additional channel for public, educational or governmental access upon the City's request if any access channel is in continuous use from 8:00 a.m. to 11:00 p.m. for three (3) consecutive months provided, however:

- (1) The use of repeat programming in excess of ten percent of the

amount of original programming on that channel, as well as text or character-generated programming shall not be considered a continuous use.

- (2) The access channels shall be considered separately. Continuous use of one channel to capacity as defined in this section is sufficient to initiate a request for an additional channel.
- (3) In no event shall Grantee be required to provide in excess of four (4) access channels total.
- (4) To the extent that any access channel is not being used for the provision of non-commercial, public, educational or governmental access purposes, Grantee shall be permitted to use such channel(s) for the provision of other services.

Grantee's permitted use of any access channel made pursuant to this section shall cease within ninety (90) days of Grantee's receipt of notice from City that such channel will again be used for public, educational or governmental access.

- (c) Notwithstanding the above, Grantee may accommodate a request from the City for additional access capacity made pursuant to this Section by combining more than one access use on a channel provided that:
 - (1) It is technically and economically feasible for Grantee to do so;
 - (2) The scheduling needs of all users of the channel can be reasonably accommodated; and
 - (3) The access entity, which requires use of the alternate channel, must be able to access the alternate channel from the site where it normally originates playback of its programs and may not be required to transport tapes to a remote site for playback.

(d) Origination Points

Grantee shall provide free cable transmission facilities at City Hall only in the event City Hall is within the Franchise area of the Grantee, provided the cost of providing such cable transmission facilities does not exceed the sum of Ten Thousand Dollars (\$10,000.00), and any costs of providing such cable transmission facilities is divided between the City and any Cable Television Franchise holders based on their respective number of subscribers. Grantee shall also contribute to the cost of modulation equipment to introduce programming onto transmission facilities with other Franchise holders based on Grantees share of the respective subscriber numbers of all Franchise holders. Grantee shall be permitted to pass this cost to Subscribers to the extent permitted by Federal and State law.

However, costs of providing said facilities shall not be a credit against payment of the Franchise fee imposed under this Franchise Agreement.

(e) **Equipment and Facilities for Public, Educational or Government Access Facilities Grantee's Responsibility for Equipment.**

Grantee is responsible for all headend equipment, including repair and maintenance, essential to playback of programming of signals generated by City or its Access producing designees.

City's Responsibility for Access. The City shall be responsible for the operation of Government Access Facilities and equipment. In this regard City may delegate from time to time its responsibilities to others who then shall assume the responsibility of City in accordance with the City's delegation.

The City will develop reasonable rules regarding use of Access Facilities and equipment and determine the needs of the City for public, educational and governmental access services. In this regard, the City shall regularly coordinate with Grantee for the purpose of developing and maintaining reasonable Access Facilities.

The City, or persons to whom it delegates responsibility for access, shall have the responsibility to provide funding for operating expenses associated with public, educational and governmental access.

13. Drops to Public Buildings. Subject to applicable law, Grantee shall provide Standard Installation of one (1) cable Drop, one (1) cable outlet, and monthly Basic Cable Service without charge to the public buildings, including City, County and Public School buildings which are located within Grantee's Franchise Area.

Drops and/or outlets in any locations within Grantee's Franchise Area will be provided by Grantee at the cost of Grantee's time and material. Alternatively, at the institution's request, said institution may add outlets at its own expense, as long as such installation meets Grantee's standards and provided that any fees for Cable Services are paid. Nothing herein shall be construed as requiring Grantee to extend the System to serve additional institutions as may be designated by City.

14. Periodic Evaluation and Review. Grantor and Grantee acknowledge and agree that the field of cable television is a rapidly changing one that may see many regulatory, technical, financial, marketing and legal changes during the term of this Franchise Agreement. Therefore, to provide for the maximum degree of flexibility in this Franchise Agreement, and to help achieve a continued advanced Cable System, the following evaluation and review provisions will apply:

- (a) The City may request evaluation and review sessions at any time during the term of this Agreement and Grantee shall cooperate in such review and evaluation; provided, however, that there shall not be more than one (1) evaluation and review session every three years.

- (b) Topics that may be discussed at any evaluation and review session include, but are not limited to, rates, channel capacity, the System performance, programming, PEG access, municipal uses of cable, Subscriber complaints, judicial rulings, FCC rulings and any other topics that the City or Grantee may deem relevant.
- (c) During an evaluation and review session Grantee shall fully cooperate with the City and shall provide without cost such reasonable information and documents as the City may request to perform the evaluation and review. The Grantee shall not be compelled to produce information which is deemed to be proprietary and confidential.
- (d) If at any time during the evaluation and review, the City reasonably believes that there is evidence of inadequate technical performance of the Cable System, the City may require Grantee, at Grantee's expense, to perform appropriate tests and analyses directed toward such suspected technical inadequacies. In making such requests, the City shall describe and identify in writing as specifically as possible the nature of the problem, the reason the City has requested special testing and the type of test that the City believes to be appropriate. Grantee shall cooperate fully with the City in performing such tests and shall report to the City the results of the tests, which shall include at least:
 - (1) The System component tested;
 - (2) the equipment used and procedures employed in testing;
 - (3) the results of the test(s) and, if necessary, the method by which the System performance problem was resolved; and
 - (4) any other information pertinent to said tests and analyses;
- (e) As a result of an evaluation and review session, the City or Grantee may determine that a change in the System or in the terms of the Franchise Agreement may be appropriate. In that event, either the City or the Grantee may propose modifications to the System or the Franchise. Grantee and the City shall review the terms of the proposed change and any proposed amendment to this Franchise Agreement and seek to reach agreement on such change or amendment provided the change or amendment is not inconsistent with applicable law or regulations and the change or amendment technically feasible, economically reasonable and will not result in a material alteration of the rights and duties of the parties under the Franchise Agreement.

**SECTION 3.
CONSTRUCTION STANDARDS**

1. Construction Codes and Permits.

(a) Grantee shall obtain all necessary permits from City before commencing any construction upgrade or extension of the System, including the opening or disturbance of any Street, or private or public property within City.

(b) The City shall have the right to inspect all construction or installation work performed pursuant to the provisions of the Franchise and to make such tests at its own expense as it shall find necessary to ensure compliance with the terms of the Franchise and applicable provisions of local, state and federal law and to protect the public health, safety and welfare of Grantor's citizens. Grantee shall have the right to be present at such inspections.

2. Repair of Streets and Property. Any and all Streets or public property or private property, which are disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance or reconstruction of the System shall be promptly and fully restored by Grantee, at its expense, to a condition as good as that prevailing prior to Grantee's work.

3. Building Movers. The Grantee shall, on 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 five (5) business days advance notice to arrange for such temporary changes. The Grantee shall have the right to require advance payment for the costs of moving its facilities.

4. Tree Trimming. The Grantee shall consult with the City Forester for approval to trim any trees upon and overhanging the Streets, alleys, sidewalks, or public easements of City so as to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee.

5. No Waiver. Nothing contained in this Franchise shall relieve any Person, as defined in this Agreement, from liability arising out of the failure to exercise reasonable care to avoid injuring Grantee's facilities.

6. Undergrounding of Cable.

(a) In all areas of City where all other utility lines are placed underground, Grantee shall construct and install its cables, wires and other facilities underground.

(b) In any area of City where one or more public utilities are aerial, Grantee may construct and install its cables, wires and other facilities from the same pole with the consent of the owner of the pole.

7. Safety Requirements. The Grantee shall at all times employ ordinary and

reasonable care and shall install and maintain in use nothing less than commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.

8. Drop Burial. Temporary drops will be buried within sixty (60) days of installation. Such sixty (60) day period shall not apply if the installation is made during the winter months, which shall be defined as November 15 to April 1. The installation period shall be extended throughout the winter months until weather conditions permit the Grantee to complete such drop buries. In the event the Grantee fails to bury said drops within sixty (60) days if outside the winter months or if the installation is made during the winter months, within sixty days after the winter months, the City shall notify the Grantee of violation of this section in accordance with the enforcement provisions in this Franchise Agreement. All subscriber drops that are located underground shall comply with National Electrical Code (NEC) standards and shall be buried to minimum depth of six (6) inches.

SECTION 4. OPERATIONS PROVISIONS

1. System Design and Channel Capacity.

- (a) Grantee shall develop, construct and operate a System capable of providing a minimum of 60 channels of video programming during the term of this Franchise Agreement.
- (b) All final programming decisions remain the discretion of Grantee; provided that Grantee notifies City and Subscribers in writing thirty (30) days prior to any channel additions, deletions, or realignments, and further subject to Grantee's signal carriage obligations hereunder and pursuant to 47 U.S.C. § 531-536, and further subject to City's rights pursuant to 47 U.S.C. § 545.

2. Special Testing.

- (a) City may require special testing of a location or locations within the System if there is a particular matter of controversy or unresolved complaints 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 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 to correct problems or complaints upon which tests were ordered. The City shall meet with Grantee prior to requiring special tests to discuss the need for such and, if possible, visually inspect those locations which are the focus of concern. If, after such meetings and inspections, City wishes to commence special tests and the thirty (30) days have elapsed without

correction of the matter in controversy or unresolved complaints, the tests shall be conducted by a qualified engineer selected by City and Grantee. In the event that special testing is required by City to determine the source of technical difficulties, the cost of said testing shall be borne equally by the Grantee and the City.

3. Parental Control Lock. Grantee shall provide, for sale or lease, to Subscribers, upon request, a parental control locking device or digital code that permits inhibiting the video and audio portions of any channels offered by Grantee.

4. Emergency Alert Capability. Within thirty-six (36) months of the effective date of this Agreement, Grantee shall provide an Emergency Alert System (EAS) in accordance with FCC Rules and Regulations and applicable law.

SECTION 5. SERVICES AND PROGRAMMING PROVISIONS.

1. Programming.

(a) Broad programming categories. Grantee shall provide or enable the provision of at least the following initial broad categories of programming:

- (1) Educational programming;
- (2) News & information;
- (3) Sports;
- (4) General entertainment (including movies);
- (5) Children/family-oriented;
- (6) Arts; culture and performing arts;
- (7) Science/documentary;
- (8) Weather information;
- (9) Public affairs;

(b) Deletion or reduction of programming categories.

- (1) Grantee shall not delete or so limit as to effectively delete any broad category of Programming identified in this Section and within its control without the consent of the City or as otherwise authorized by law.
- (2) In the event of a modification proceeding under Federal law, the mix and quality of services provided by the Grantee on the effective date of this Franchise shall be deemed the mix and quality of services required under this Franchise throughout its term.

2. Leased Commercial Access. If Grantee offers leased commercial access, it shall do so in accordance with applicable Federal law.

3. Subscriber Inquiries. Grantee shall have a publicly listed toll-free telephone number and be operated so as to receive Subscriber complaints and requests on a twenty-four (24) hour-a-day, seven (7) days-a-week basis.

4. Refund Policy. In the event a Subscriber established 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 period.

5. General Technical Standards and Customer Service Practices.

- A. This Ordinance incorporates technical standards and establishes customer Service practices that a Grantee must satisfy.
- B. In accordance with applicable law, Grantee shall maintain such equipment and keep such records as are reasonably required to enable the City to determine whether the Grantee is in compliance with all standards required by these regulations and other applicable laws.

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

Test and Compliance Procedure. Tests for a System shall be performed in accordance with the FCC's rules and regulations. Representatives of the City may witness the tests and written test reports shall be made available to the City upon reasonable prior written request. If more than ten percent (10%) of Grantee's locations in the City tested fail to meet the performance standards, Grantee shall be required to indicate what corrective measures have been taken and the entire test shall be repeated if requested by the City.

Emergency Requirements. Grantee must provide emergency alert override capabilities in a manner consistent with the FCC's Emergency Alert System ("EAS") rules and consistent with any State and/or regional Emergency Alert System plans adopted in response to the FCC's EAS rules that are applicable to the Franchise Area.

Programming Decisions. In accordance with applicable law, Grantee shall provide programming from each of the broad programming categories listed in accordance with the Franchise Agreement. All programming decisions remain within the sole discretion of each Grantee provided that Grantee complies with federal law regarding notice to Grantor and Subscribers

prior to any Channel additions, deletions, or realignments, and further subject to the Grantee's signal carriage obligations pursuant to 47 U.S.C. §§ 531-536, as may be amended and subject to the City's rights pursuant to 47 U.S.C. § 545, as may be amended.

Cable System Hours and Telephone Availability.

- A. Grantee shall maintain a publicly listed toll-free or collect call telephone access line that is available to Subscribers twenty-four (24) hours a day, seven (7) days a week. The local or toll-free numbers shall be listed, with appropriate explanations, in all widely utilized local phone directories.
- B. Grantee shall have trained representatives available to respond to Subscriber telephone inquiries during Normal Business Hours. The term "trained representatives" shall mean employees of the Grantee who have the authority and capability while speaking with a Subscriber to, among other things, answer billing questions, and schedule Service and installation calls.
- C. All employees of the Grantee shall identify themselves when answering an incoming call or inquiry, or while working in the field. Supervisory personnel must use reasonable efforts to respond to Subscriber requests to speak with a "manager or supervisor" within one business day of the request under Normal Operating Conditions, during Normal Business Hours and supervisory personnel will respond no later than the next business day.
- D. After Normal Business Hours, the telephone access line may be answered by a Service or an automated response System, including an answering machine. Inquiries received after Normal Business Hours must be responded to by a trained representative on the next business day.
- E. Under Normal Operating Conditions, telephone answer time by a customer Service representative or automated response unit, including wait time, should not exceed thirty (30) seconds. If a call must be transferred, transfer time should not exceed thirty (30) seconds.
- F. Under Normal Operating Conditions, Subscribers should not receive a busy signal more than three percent (3%) of the time. Standards provided in the immediately preceding Section F. and this Section are intended to be reasonable, and while not mandatory, represent reasonable service quality standards.
- G. The period of three (3) hours following major outages (more than 25% of the Grantee's Subscribers) or periods of natural disasters are not included in the response requirements above, provided that Grantee has used reasonable best efforts to provide voice-mail information about the outage on phone answering equipment and the System bulletin board (assuming outage is not City-wide) and the Grantee provides documentation to City as soon as reasonably possible following the outage, including beginning and ending times, area of outage, location and cause of problem.
- H. Grantee shall respond to all Subscriber or user inquiries or complaints within ten (10) days of the inquiry or complaint, unless the resolution of the Subscriber or

user inquiries or complaints is not reasonably available within that time frame, in which case Grantee shall respond as soon as reasonably possible. The requirement that Grantee respond to all Subscriber or user inquiries or complaints within ten (10) days of the inquiry or complaint as provided above shall apply except to the extent a more stringent standard is set forth for specific types of activities, inquiries or complaints in this Franchise Ordinance/Agreement.

Installations, Outages, and Service Calls. Under Normal Operating Conditions, each of the following standards must be met no less than ninety-five percent (95%) of the time as measured on a quarterly basis:

- A. Maintenance Service capability enabling the prompt location and correction of substantial System malfunctions or outages shall be available twenty-four (24) hours a day, seven (7) days a week.
- B. To the extent practical, at the time an appointment is scheduled, the Grantee shall inform the Subscriber of Service procedures, required payments, possible delays, and phone or field verification procedures which are related to the appointment and/or possible rescheduling/cancellation.
- C. The appointment window alternatives for Standard Installations and Service calls will be within a maximum four (4) hour time block during Normal Business Hours. Grantees may schedule Service calls and other installation activities outside of Normal Business Hours for the express convenience of a Subscriber, if so requested.
- D. No Grantee may cancel an appointment with a Subscriber after the close of business on the business day prior to the scheduled appointment.
- E. If a Grantee's representative is running late for an appointment with a Subscriber and will not be able to keep the appointment as scheduled, all reasonable efforts will be made to contact the Subscriber. The appointment must be rescheduled, as necessary, at a time that is convenient for the Subscriber.
- F. The Grantee may phone the Subscriber within the appointment window to verify that the appointment is still needed. If the subscriber telephone is answered by a machine or Service, the Grantee may leave a message which includes a number the Subscriber may use to call back to confirm or reschedule the appointment.
- G. Appointments may not be canceled or rescheduled until field personnel of the Grantee make reasonable efforts to verify that the Subscriber or other authorized adult is not at the address for the appointment.

- H. Upon arrival at the Subscriber's address, if the Grantee verifies that a Subscriber is not at the address during the scheduled appointment window, the Grantee shall leave a door tag or similar notice with the name of the person leaving the notice, the time the person determined that the Subscriber was not at home; and a telephone number the Subscriber may call back to confirm or reschedule an appointment.
- I. Any vehicle used for the installation, construction, maintenance, or repair of a Cable System shall bear the identification of the Grantee in a conspicuous place and manner.
- J. Reconnections due to erroneous disconnection based on billing or technical errors must be completed at no charge within twenty-four (24) hours of notification by the affected Subscriber.
- K. Reconnections after a disconnection attributed to non-payment of bills must be completed within seven (7) business days of Grantee's receipt of back payment.
- L. The Subscriber may be billed for installations or reconnections as soon as each such service is installed.
- M. Runs in building interiors shall be as unobtrusive as reasonably possible and outlets shall be located for the convenience of the Subscriber. The Grantee shall use due care in the process of installation and shall repair any damage to the Subscriber's property caused by installation work. Such restoration shall be undertaken as soon as possible after the damage is incurred, shall be subject to reasonable Subscriber approval of the corrective action, and Grantee shall use its best efforts to complete the corrective action within no more than thirty (30) days after the damage is incurred. Should such restoration not be corrected within thirty (30) days, the Grantee shall notify the Subscriber as to the cause for the delay and the date when such action shall be completed.
- N. Failure of the Grantee to maintain adequate budget, sufficient staff or properly trained staff shall not constitute justification for failure to comply with these provisions.

Repairs and Interruptions.

- A. Every Grantee will begin working on Service Interruptions and outages within a reasonable timeframe but in no event later than twenty-four (24) hours after the Service Interruption becomes known.
 - (1) Any reports of "no picture/no sound" must be responded to within sixteen (16) business hours of such report, unless reported during a weekend or holiday, which shall require a response during the next regular business day.
 - (2) Work not requiring the Operator to enter Subscriber premises (or property) shall not require the Subscriber to be available for an appointment and

shall not be delayed on account of the Grantee's inability to arrange an appointment with the Subscriber.

B. Work on all other requests for Service must begin by the next business day after notification of the problem.

C. The Subscriber does not need to be home for outside plant and line repairs.

D. A Grantee may interrupt Service only for good cause and for the shortest time possible, including interruption for System upgrade, maintenance and repair. Grantee shall use reasonable efforts to perform maintenance at times that affect the fewest number of Subscribers.

E. A Grantee shall provide a pro rata credit for Service for each Service Interruption exceeding four (4) hours in any twenty-four (24) hour period, unless it is demonstrated that the Subscriber caused the outage, or the outage was planned as part of an upgrade or other work of which the City and the Subscriber received appropriate prior general notification or the Service Interruption was determined to be beyond the control of Grantee. A Subscriber is entitled to a full refund for any Cable System or equipment impairment to pay-per-view event. These credits and refunds shall be made available upon request by Subscriber.

F. Service Call Charges. Unless otherwise agreed to, no charge shall be made to a Subscriber for any Service call relating to Grantee owned and Grantee maintained equipment after the initial installation of Cable Service unless the problem giving rise to the Service request can be demonstrated by Grantee to have been:

- (1) Caused by the negligence or malicious destruction of cable equipment by the subscriber; or
- (2) A problem established as having been non-cable in origin.
- (3) A customer education problem requiring unnecessary visits by Grantee.

G. An "Identified Outage" is construed as reports of no picture/no sound from three (3) or more Subscribers in close geographic proximity or along the same trunk or feeder line within twenty (20) minutes of each other.

H. Within one (1) hour of an Identified Outage during Normal Business Hours, Service technicians will respond and use all available reasonable means to correct the outage in the shortest possible amount of time. The Grantee shall maintain and forward to the City, upon request, reports on the cause, area, duration and repair of the outage.

I. Cable drop lines, cable trunk lines, or any other type of outside wiring that comprise part of the Grantee's Cable System that are located underground, shall be placed in such locations pursuant to City Code, and the surrounding ground shall be restored to a condition which is reasonably comparable to the condition immediately prior to such construction, within seventy-two (72) hours after connection to the Cable

System, or such time as agreed to by the property owner. Additional time may be allowed for the completion of such restoration if individual circumstances warrant. The requirements of this subsection shall apply to all installation, reinstallation, Service or repair commenced by the Grantee within the City during Normal Operating Conditions.

Communications Between Grantees and Subscribers.

A. Notifications to Subscribers:

- (1) In accordance with applicable law, Grantee shall provide written information to Subscribers on each of the following topics at the time of installation, at least annually to all Subscribers, at any time upon request, and at least thirty (30) days prior to making significant changes in such information:
 - (a) Product and Services offered;
 - (b) Prices and options for programming services and conditions of subscription to programming and other services and facilities;
 - (c) Installation and maintenance policies including, when applicable, information regarding the Subscriber's home wiring rights and information describing ownership of internal wiring during the period Service is provided;
 - (d) Instructions on how to use Services;
 - (e) Channel positions of programming offered on a System;
 - (f) Billing and Complaint procedures, including the name, address and telephone number of the City;
 - (g) The availability of Converters, Lockout Devices or other signal control devices;
 - (h) The Grantee's practices and procedures for protecting against invasions of privacy; and
 - (i) The address and telephone number of the Grantee's office to which Complaints may be reported.
- (2) Grantee promotional materials, announcements and advertising of Service to Subscribers, including pay-per-view or event programming, shall clearly and accurately disclose price terms. In the case of telephone orders, the Grantee shall take appropriate steps to reasonably explain the price terms to potential customers before the order is accepted.
- (3) Subscribers will be given thirty (30) days advance notice of any changes in rates, programming Services, or Channel positions through any written means that is reasonably likely to bring such information to the attention of Subscribers.

B. Billing:

- (1) Bills must be clear, concise, and understandable. Bills must be itemized, with itemizations including, but not limited to, Basic and premium Service

charges and equipment charges.

- (2) Bills must clearly show a specific payment due date.
- (3) If Grantee chooses to itemize, as a separate line item on bills, Franchise Fees or other government imposed fees attributable to the total bill, such fees must be shown in accordance with any applicable law concerning the Grantee's ability to itemize such fees.
- (4) Bills must also clearly delineate all activity during the billing period, including optional charges, rebates, and credits. Nothing in this section prohibits or restricts a Grantee from offering packages of programming to Subscribers and to identify such packages on the Subscriber bill.
- (5) The billing statement must clearly and conspicuously indicate the past due date, and if applicable the date certain that a Subscriber's Service will be eligible for disconnection.
- (6) Negative option billing is prohibited unless applicable federal law specifically requires that the Grantee be permitted to engage in such practice.
- (7) In case of a billing dispute, a Grantee must respond to a written Complaint from a Subscriber within thirty (30) days. Credits for Service shall be issued no later than the Subscriber's next billing cycle after determination that the credit is warranted.

Complaint Log. Subject to the privacy provisions of 47 U.S.C. § 521 et seq., Grantor and every Grantee shall prepare and maintain written records of all Complaints made to them and the resolution of such Complaints, including the date of such resolution. Such written records shall be on file at the office of Grantee. Grantee shall make available to Grantor a written summary of such Complaints and their resolution upon request.

Lockout Device.

- A. Grantee shall provide to any Subscriber upon request for sale or lease a Lockout Device for blocking both video and audio portions of any channel(s) of programming entering the Subscriber's premises.
- B. Scrambling/Blocking. Grantee shall at all times scramble both the audio and video portions of all channels with predominately adult oriented programming.

Line Extension Policy. No resident within the Franchise Area shall be refused Service arbitrarily. Unless otherwise set forth in the Franchise Agreement, whenever Grantee receives a request for Cable Service in an unserved portion of the Franchise area where there are at least 25 dwelling units (which shall be interpreted to include businesses that have contractually agreed to subscribe to Cable Service) within one

linear cable mile of the Grantee's nearest trunk or distribution cable from which it is technically feasible to extend Service, or the dwelling unit is within 125 feet of Grantee's distribution cable, it shall extend its Cable System to such Subscriber at no cost, other than the published standard installation fee charged to all Subscribers.

Mobility Limited Subscribers. Unless otherwise agreed in this Franchise Ordinance/Agreement, upon the request of mobility-limited Subscribers, Grantee shall arrange for delivery, pickup or exchange or replacement of converters or other equipment at the Subscriber's address.

Customer Service Reporting Requirements. Based on a substantial number and a documented pattern of verbal or written Complaints received by Grantor, and upon six (6) months notice to Grantee, Grantor may require Grantee to begin collecting data of such Complaints, including, at minimum, the following:

- A. A telephone report containing the following information relevant to the question of whether the Grantee's telephone answering System complies with the standards of this Ordinance:
 - (1) Total number of calls received by the Call System handling the Franchise Area;
 - (2) Total number of calls abandoned by the Call System handling the Franchise Area;
 - (3) Total percentage of calls abandoned;
 - (4) Percentage of calls answered within thirty (30) seconds; and
 - (5) A description of significant events impacting telephone response times.
- B. The number of free Standard Installations that were issued for failure to arrive for Standard Installations.
- C. A significant Service Interruptions report that tracks information on a monthly basis to include:
 - (1) Total number of Service Interruptions;
 - (2) Time of all Service Interruptions;
 - (3) Total hours that the System was out-of-service as related to planned maintenance or Channel line-up changes performed by a Grantee; and
 - (4) Estimated number of Subscribers affected by each incident.

In addition to the above, the City may request that Grantee begin Service Interruption reports contain graph(s) that depict Grantee's performance with respect to the items above for the first three (3) year period of this Franchise and thereafter up to a three (3) year period prior to the date the report was requested.

D. Results of any technical testing on the System.

Dispute Resolution.

A. Grantee shall establish procedures for receiving, acting upon, and resolving customer complaints, and crediting customer accounts, without intervention by the Grantor. Such procedures shall prescribe the manner in which any Subscriber may submit a complaint by telephone, fax, e-mail or in writing to the Grantee that it has violated any provision of these Customer Service Standards, any terms or conditions of the Customer's contract with the Grantee, or reasonable business practices. Grantee shall use reasonable efforts to log oral complaints it receives and shall not be obligated to provide verbatim reports or transcripts of oral complaints provided the nature of the complaint is adequately provided to the Grantor if requested by Grantor.

B. The Grantee's complaint procedure shall be filed with the Grantor.

C. The Grantee's investigation of a Subscriber complaint shall be concluded in no more than fifteen (15) business days after receiving the complaint, at which time the Grantee shall notify the Subscriber of the results of its investigation and its proposed action.

D. The Grantor may also notify the Subscriber of his/her rights to file a complaint with the Grantor in the event the Subscriber is dissatisfied with the Grantee's decision, and shall thoroughly explain the necessary procedures for filing such complaints with the Grantor.

E. The Grantor will review and notify Grantee of all complaints it receives against Grantee regarding quality of service, equipment malfunctions, billing disputes, and property damage. In conducting its review, the Grantor may request additional information from the Grantee and/or Subscriber.

**SECTION 6.
FRANCHISE FEE, INSURANCE PROVISIONS**

1. Franchise Fee.

(a) Grantee shall pay to City an Annual Franchise Fee in the amount of five percent (5%) of its annual Gross Revenues as defined in Section 1. of this Agreement.

(b) Any payments due under this provision shall be payable within 30 days of

the end of the Grantee's fiscal quarter and shall include a report showing the basis for the computation. Grantee's responsibility for payment of Franchise Fee under this Agreement shall commence on the first day of the calendar month that is at least 30 days after final execution of this Agreement. Until that time, Grantee shall continue to pay the Franchise Fee under any pre-existing Franchise Agreement with the Local Franchising Authority

(c) The City shall have the right, at any time during the term of this Franchise, to increase the Annual Franchise Fee to the maximum percentage permitted by law, however the City shall provide Grantee at least sixty (60) days notice prior to the effective date of any increase or decrease of the Annual Franchise Fee.

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

3. Indemnification.

(a) Except as otherwise provided herein, Grantee shall indemnify, hold harmless, release and defend City, its officers, agents and employees from and against any and all lawsuits, claims, actions, demands, damages, disability, losses, expenses including attorney's fees and other defense costs or liabilities of any nature that may be asserted by any Person or entity arising out of the activities of Grantee, its subcontractors, employees and agents hereunder. Grantee shall be solely responsible and save City harmless from all matters relative to payment of Grantee's employees, including compliance with Social Security, withholding and other payroll requirements.

(b) This indemnification obligation is not limited in any way by a limitation of the amount or type of damages or compensation payable by or for Grantee under workers' compensation, disability or other employee benefit acts, acceptance of insurance certificates required under this Agreement, or the terms, applicability or limitations of any insurance held by Grantee.

(c) Grantor does not, and shall not, waive any rights against Grantee which it may have by reason of this indemnification, because of the acceptance by Grantor, or the deposit with Grantor by Grantee of any of the insurance policies described in this Franchise Agreement.

(d) This indemnification by Grantee shall apply to all damages and claims for damages of any kind suffered by reason of any of the aforesaid operations referred to in this Section, regardless of whether or not such insurance policies shall have been determined to be applicable to any such damages

or claims for damages.

(e) Grantee shall not be required to indemnify Grantor for negligence or misconduct on the part of Grantor or its officials, boards, commissions, agents, or employees (hereinafter negligence or misconduct may be referred to as "such acts"). Grantor shall hold Grantee harmless for any damage resulting from any such acts of the Grantor or its officials, boards, commissions, agents, or employees in utilizing any PEG access channels, equipment, or facilities and for any such acts committed by Grantor in connection with work performed by Grantor and permitted by this Agreement, on or adjacent to the Cable System.

4. Grantee's Insurance. Grantee shall not commence any Cable System construction work or permit any subcontractor to commence work until both shall have obtained or caused to be obtained all insurance required under this Section. Said insurance shall be maintained in full force and effect until the completion of construction.

5. Workers' Compensation Insurance. Grantee shall obtain and maintain workers' compensation insurance for all of Grantee's employees, and in case any work is sublet, Grantee shall require any subcontractor similarly to provide workers' compensation insurance for all subcontractor's employees, all in compliance with State laws, and to fully protect the Grantor from any and all claims arising out of occurrences resulting from Cable System construction work. Grantee hereby indemnifies Grantor for any damage resulting to it from failure of either Grantee or any subcontractor to take out and maintain such insurance. Grantee shall provide the Grantor with a certificate of insurance indicating workers' compensation coverage with its acceptance of this Franchise Agreement.

6. Insurance.

(a) Grantee shall file, with its acceptance of this Franchise Agreement, and at all times thereafter maintain in full force and effect during the entire term of this Franchise at its sole expense, comprehensive general liability insurance that shall protect the Grantee, the Grantor, and the Grantor's officials, officers, employees and agents from claims which may arise from operations under this Franchise, whether such operations are by the Grantee, its officials, officers, directors, employees and agents, or any subcontractor of Grantee. This liability insurance shall include but shall not be limited to protection against claims arising from bodily and personal injury and damage to property, resulting from Grantee's automobiles, products and completed operations. The amount of insurance for single limit coverage applying to bodily and personal injury and property damage shall not be less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in aggregate. The following endorsements shall attach to the liability policy:

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

- (2) The policy shall cover blanket contractual liability subject to the standard universal exclusions of contractual liability included in the carrier's standard endorsement as to bodily injuries, personal injuries and property damage.
 - (3) Broad form property damage liability shall be afforded.
 - (4) The Grantor shall be named as an additional insured on the policy.
 - (5) An endorsement shall be provided which states that the coverage is primary insurance and that no other insurance carried by the Grantor will be called upon to contribute to a loss under this coverage.
 - (6) Standard form of cross-liability shall be afforded.
 - (7) 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 thirty (30) days' advance written notice has been provided to Grantor.
- (b) Grantor reserves the right to adjust the coverage limit requirements no more than every five (5) years. Any such adjustment by the Grantor will be no greater than the increase in the State of South Dakota Consumer Price Index (all consumers) for such five (5) year period.
- (c) Grantee shall submit to Grantor documentation of the required insurance including a certificate of insurance signed by the insurance agent and companies named, as well as all properly executed endorsements.
- (d) Any deductible or self-insured retention must be declared to Grantor.

**SECTION 7.
FRANCHISE VIOLATION/REVOCAION OF FRANCHISE**

1. Franchise Violations. Grantor, by action of the City Manager, shall first notify Grantee of a violation in writing by personal delivery or registered or certified mail, and demand correction within a reasonable time, which shall not be less than twenty (20) business days in the case of the failure of the Grantee to pay any sum or other amount due the Grantor under this Agreement, and thirty (30) days in all other cases. If Grantee fails to correct the violation within the time prescribed, or if Grantee fails to commence corrective action within the time prescribed and diligently remedy such violation thereafter, the Grantee shall then be given a written notice of not less than thirty (30) days of a public hearing to be held before the City Council. Said notice shall specify the violation(s) alleged to have occurred.

- (a) At the public hearing, the City Council shall hear and consider all relevant evidence, and thereafter render findings, its decision, and the penalty or penalties for the violation.
- (b) In the event the City Council finds that Grantee has corrected the violation, or has diligently commenced correction of such violation after notice thereof from Grantor and is diligently proceeding to fully remedy such violation, or that no material violation has occurred, the proceedings shall terminate and no penalty or other sanction shall be imposed. In determining whether a violation is material, Grantor shall take into consideration the reliability of the evidence of the violation, the nature of the violation and the damage, if any, caused to the Grantor thereby, whether the violation was chronic, and any justifying or mitigating circumstances and such other matters as the Grantor may deem appropriate.
- (c) Grantor may impose any penalty or sanction authorized by Federal or State law for a violation of this Franchise, however imposition of any such penalty shall not constitute a waiver of any right of the Grantor to pursue any other remedy permitted by law.

2. Revocation of Franchise.

(a) Grantor's Right to Revoke.

(1) In addition to all other rights which Grantor has pursuant to law or equity, Grantor reserves the right to revoke, terminate or cancel this Franchise, and all rights and privileges pertaining thereto, if after the hearing required by Section 7.1 herein, it is determined that:

- (i) Grantee has violated any material provision of this Franchise; or
- (ii) Grantee has attempted to evade any material provision of the Franchise; or
- (iii) Grantee has practiced fraud or deceit upon Grantor or Subscriber.

(b) Procedures for Revocation.

(1) Grantor shall provide Grantee with written notice of a cause for revocation and the intent to revoke this Franchise 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.

(2) Grantee shall be provided the right to a public hearing affording due process before the City Council prior to revocation, which public hearing shall follow the thirty (30) day notice provided in Section (b.1.) immediately above. At the public hearing, Grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce relevant evidence, to require the production of

evidence, to compel the relevant testimony of the officials, agents, employees or consultants of the Grantor, to compel the testimony of other persons as permitted by law, and to question witnesses. A complete verbatim record and transcript shall be made of such hearing, the cost of such transcript to be paid by Grantee. The Grantor shall provide Grantee with written notice of its decision together with written findings of fact supplementing said decision.

(3) After the public hearing and upon written determination by Grantor to revoke the Franchise, Grantee may appeal said decision to an appropriate State or Federal court or agency within sixty (60) days of said decision. Unless otherwise provided by Federal or State law, the decision of the Grantor to revoke the Franchise shall be subject to review *de nova*.

(4) During the appeal period, the Franchise shall remain in full force and effect unless the term of the Franchise Agreement expires during the appeal period.

(5) The Grantor may, at its sole discretion, take any lawful action which it deems appropriate to enforce the Grantor's rights under the Franchise in lieu of, or in addition to, appeal or public hearing upon revocation of this Franchise.

SECTION 8. PROTECTION OF INDIVIDUAL RIGHTS

1. Subscriber Privacy. Grantee shall comply with the terms of 47 U.S.C. § 551 relating to the protection of Subscriber privacy.

SECTION 9. 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 connection, extension, or division, whether physically, acoustically, inductively, electronically or otherwise, with or to any segment of the System.

2. Removal or Destruction Prohibited. It shall be unlawful for any firm, Person, group, company, corporation, or governmental body or agency to willfully interfere, tamper, remove, obstruct, or damage, or assist thereof, any part or segment of the System for any purpose whatsoever.

3. Penalty. Any firm, Person, group, company, corporation or government body or agency found guilty of violating this section may be fined not more than Two Hundred Dollars (\$200.00) for each and every offense. Each continuing day of the violation shall be considered a separate occurrence and offense.

**SECTION 10.
MISCELLANEOUS PROVISIONS**

1. Franchise Renewal. Any renewal of this Franchise shall be done in accordance with applicable Federal, State and local laws and regulations.

2. Amendment of Franchise Ordinance. Grantee and Grantor may agree, from time to time, to amend this Franchise. Such written amendments may be made at any time if Grantor 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. Grantor shall act pursuant to local law pertaining to the ordinance amendment process.

3. Mediation. To aid in the analysis and resolution of any future disputed matters relative to this Franchise Agreement, the Grantor and Grantee may, by mutual agreement (both as to whether to hire and whom to hire), employ the services of technical, financial or legal consultants, as mediators. All reasonable fees of the consultants incurred by the Grantor and the Grantee in this regard shall be borne equally.

4. Force Majeure. Neither Grantor nor Grantee shall be liable for damages or subject to penalty due to delay or failure to perform any duty imposed by this Franchise Agreement if such delay or failure results directly or indirectly from circumstances beyond the control of such party. Within thirty (30) days of Grantee's discovery of the event causing such delay or failure, Grantee shall provide Grantor written notice describing the cause of the delay or failure and estimating the period of time in which such delay or nonperformance will be cured.

5. Rate Regulation/Internet as a cable service. If Grantor is permitted under Federal and/or State law to regulate the rates charged by Grantee, and if Grantor elects to regulate, Grantor shall establish reasonable procedures consistent with due process and applicable law and follow those procedures before so regulating. In addition, if the term "internet service" is modified by Federal law or by the FCC, such services as are included within the term "cable service" shall be subject to the Franchise Fee, again, to the extent permitted by Federal and State law.

**SECTION 11.
CONFLICT WITH OTHER ORDINANCES**

In the event of any conflict or ambiguity between the terms and conditions of this Franchise Ordinance and any other Ordinance, this Ordinance shall control, except as may be specifically otherwise provided in this Ordinance. The Grantor reserves all rights that it may possess under law to adopt any ordinance regulating the use of the Grantor's streets and rights of ways.

**SECTION 12.
PUBLICATION EFFECTIVE DATE; ACCEPTANCE AND EXHIBITS**

1. Publication; Effective Date. This Franchise shall be published in accordance with applicable South Dakota law. The Effective Date of this Franchise shall be October 1, 2024. The parties agree that, during the time between final execution of this Franchise and the Effective Date, the terms and conditions of the previous franchise agreement will govern. Grantee shall promptly reimburse Grantor the publication costs associated with this Ordinance.

2. Acceptance.

(a) Grantee shall accept this Franchise Agreement within sixty (60) days of the adoption of the Franchise Ordinance by the City Council, unless the time for acceptance is extended by Grantor. Such acceptance by the Grantee shall be deemed the grant of this Franchise for all purposes. Upon acceptance of this Franchise, Grantee shall be bound by all the terms and conditions contained herein.

(b) Grantee shall accept this Franchise in the following manner:

(1) This Franchise shall be properly executed by Grantee and delivered to Grantor.

(2) With its acceptance, Grantee shall also deliver any Insurance certificate required herein that have not previously been delivered to Grantor.

Passed and adopted this 10th day of September, 2024.

CITY OF BROOKINGS, SD
GRANTOR

By: _____
Oepke G. Niemeyer, Its: Mayor

ATTEST:

Bonnie Foster, City Clerk

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

Dated: _____

MEDIACOM MINNESOTA LLC,
GRANTEE

By: _____
Its: _____

EXHIBIT A
DROPS TO PUBLIC BUILDINGS

The following cable drops to public buildings shall be provided upon request by the Grantor:

City: Brookings City and County Government Center
 Brookings Police Department

School: All current schools
 Any Future schools constructed during the franchise period within
 125 feet of current plant.

Library

Larson Ice Center

Dacotah Bank Center

Street Maintenance Shop

City: The Brookings City and County Government Center and Brookings Police Department – 2 High speed data lines (HSD) installed at each building at no cost to the Grantor, with HSD service provided at residential rates, though not to be upgraded without monthly charge added to associated speed and service.

Note: Buildings not identified on the above list may be included by Grantor's notice to Grantee of the building and location provided the building is within 125 feet of Grantee's nearest trunk or distribution cable. Grantee shall provide free drop within ninety (90) days after receipt of notice.