

GAS FRANCHISE  
ORDINANCE NO. 183

AN ORDINANCE OF THE CITY OF STEWARTVILLE, MINNESOTA GRANTING TO PEOPLES NATURAL GAS COMPANY, DIVISION OF INTERNORTH, INC., ITS LESSEES, SUCCESSORS AND ASSIGNS A NON-EXCLUSIVE AUTHORITY FOR A PERIOD OF TWENTY-FIVE (25) YEARS TO ERECT, MAINTAIN AND OPERATE, A GAS DISTRIBUTION SYSTEM AND ANY AND ALL NECESSARY MAINS, PIPES, SERVICES AND OTHER APPURTENANCES THEREUNTO APPERTAINING IN, UPON, OVER, ACROSS AND ALONG THE STREETS, ALLEYS, BRIDGES, AND PUBLIC PLACES OF THE SAID CITY, AND FOR THE TRANSMISSION, DISTRIBUTION AND SALE OF NATURAL AND/OR MIXED GAS FOR LIGHTING, HEATING, INDUSTRIAL AND ALL OTHER USES AND PURPOSES IN SAID CITY AND FOR THE PURPOSE OF TRANSMITTING, TRANSPORTING AND CONVEYING SUCH GAS INTO, THROUGH OR BEYOND THE IMMEDIATE LIMITS OF SAID CITY TO OTHER CITIES, TOWNS AND CUSTOMERS, AND PRESCRIBING THE TERMS AND CONDITIONS UNDER WHICH THE SAID COMPANY IS TO OPERATE, AND REPEALING ORDINANCE NO. 48 OF SAID CITY.

The City Council of Stewartville, Minnesota Ordains:

Section 1

That Peoples Natural Gas Company, Division of InterNorth, Inc., its lessees, successors and assigns, hereinafter referred to as Grantee, be and are hereby granted a non-exclusive authority for a period of twenty-five (25) years, to erect, construct, maintain and operate, a gas distribution system and any and all necessary mains, pipes, services and other appurtenances and equipment thereunto appertaining in, upon, over, across and along the streets, alleys, bridges and public places in the City of Stewartville, Minnesota for the transmission, distribution and sale of natural and/or mixed gas for lighting, heating, industrial and all other uses and purposes in said City and for the purpose of transmitting, transporting and conveying such gas into, through or beyond the immediate limits of said City to other cities, towns and customers.

Section 2

Whenever the Grantee, in the construction or maintenance of its system or in the installation of any extension thereto, shall cut into or take up any pavement or shall make any excavation in any street, avenue, alley or public place, within the corporate limits of the City of Stewartville, Minnesota the same shall be done in a manner so as not to unreasonably interfere with the use of such thoroughfares by the public. The Grantee shall use such safeguards as may be necessary to prevent injury to persons or property during such construction work and upon its completion, all pavement shall be replaced in as good condition as it was before taken up. All excavations shall be refilled and all obstructions shall be removed at the

expense of the Grantee and to the satisfaction of the Grantor. In the event that the Grantee shall fail to comply with the provisions of this Section after having been given reasonable notice, the Grantor may do such work as may be needed to properly repair said thoroughfare and the cost thereof shall be repaid to the Grantor by the Grantee.

Section 3

The Grantee in constructing and maintaining said gas distribution system, and in entering and using said streets, highways, avenues, alleys and public places in the City of Stewartville, Minnesota and in laying and installing its mains, services, piping, and related appurtenances and equipment, shall not in any manner interfere with or injure any improvement which said City now has or may hereafter have upon any of its streets, alleys, highways or public places.

Section 4

Grantee agrees for and in behalf of itself, its lessees, successors and assigns, that for and during the term and period of this grant, it will maintain in the City an adequate, modern, standard and sufficient gas system and equipment and to maintain and operate the same in a modern and adequate fashion.

Grantee will from time to time during the term of this Ordinance make such enlargements and extensions of its distribution system as the business of the Grantee and the growth of said City justify, in accordance with its Rules and Regulations relating to customer connections and main and service line extensions currently in effect and on file from time to time with the Minnesota Public Service Commission or other competent authority having jurisdiction in the premises; provided, however, that no obligation shall extend to, or be binding upon the Grantee, to construct or extend its mains or furnish natural gas or natural gas service within said City if Grantee is, for any reason, unable to obtain delivery of natural gas at or near the corporate limits of said City or an adequate supply thereof to warrant the construction or extension of its mains, for the furnishing of such natural gas or gas service; provided, further, that when the amount of natural gas supplied to Grantee at or near the City limits of said City is insufficient to meet the additional firm requirements of connected or new consumers, Grantee shall have the right to prescribe reasonable rules and regulations for allocating the available supply of natural gas for such additional firm requirements to residential, commercial and industrial consumers in that order of priority.

Section 5

Grantee agrees for and in behalf of itself, its lessees, successors and assigns, that all authority and rights in this Ordinance contained shall at all times be subject to all rights, power and authority now or hereafter possessed by the City of Stewartville Minnesota, to regulate the manner in which grantee shall use the streets, alleys, bridges and public places of said City and concerning the manner in which Grantee shall use and enjoy the franchise herein granted.

Section 6

Grantee shall, at all times, maintain an adequate pressure and adequate supply of clean, standard gas of the British Thermal Unit heating value of not less than that prescribed in its Rules and Regulations relating thereto in effect and on file from time to time with the Minnesota Public Service Commission or other competent authority having jurisdiction in the premises. Should the British Thermal Units fall below the limitation set forth in its appropriate Rules and Regulations, the rate then in effect shall be automatically and correspondingly lowered and reduced during any period or periods of time in which such lower British Thermal Unit value shall be furnished. The City shall have the privilege of requesting Grantee to furnish satisfactory proof of British Thermal Unit content of the gas.

Section 7

The Grantee shall hold the Grantor harmless from any and all claims and actions, litigation or damage, arising out of the passage of this Ordinance or of the construction, erection, installation, maintenance or operation of its properties operated by authority of this Ordinance within the corporate limits of the City of Stewartville, Minnesota or the negligence of its employees in the operation thereof, including the Court costs and reasonable attorney fees in making defense against such claims. A copy of the process served upon the Grantor shall be served by the Grantor upon the Grantee. The Grantee shall have the right to defend in the name of the Grantor and to employ counsel for such purpose.

Section 8

If the Grantee shall be in default in the performance of any of the terms and conditions of this Ordinance and shall continue in default for more than thirty (30) days after receiving notice from the City of Stewartville, Minnesota of such default, the said City may, by ordinance duly passed and adopted, terminate all rights granted under this Ordinance to the Grantee. The said notice of default shall specify the provision or provisions in the performance of which it is claimed the Grantee is in default. Said notice shall be in writing and served in the manner provided by the laws of the State of Minnesota for the service of original notices in civil actions.

Section 9

The right and authority herein granted shall be non-exclusive and shall be and continue for a period of twenty-five (25) years from and after the effective date of this Ordinance.

Section 10

Ordinance No. 48 of the City of Stewartville, Minnesota is hereby repealed as of the effective date hereof.

Section 11

This Ordinance shall be in full force and effect from and after its passage and publication as required by law, and the acceptance thereof by the Grantee.

If the Grantee does not within (sixty) 60 days following passage of this Ordinance express in writing its objections to any terms or provisions contained therein, or reject this Ordinance in its entirety, the Grantee shall be deemed to have accepted this Ordinance and the terms and conditions of the franchise contained therein.

Passed, adopted and approved this 26th day of November, 1985.

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Larry Gray, Mayor

ATTEST:

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Jonathan H. Pearson  
City Clerk-Administrator

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ELECTRIC FRANCHISE  
ORDINANCE NO. 203

AN ORDINANCE OF THE CITY OF STEWARTVILLE, COUNTY OF OLMSTEAD STATE OF MINNESOTA, GRANTING TO INTERSTATE POWER COMPANY, A DELAWARE CORPORATION, ITS SUCCESSORS AND ASSIGNS, PERMISSION TO ERECT, INSTALL, CONSTRUCT, RECONSTRUCT, REPAIR, OWN, OPERATE, MAINTAIN, MANAGE AND CONTROL AN ELECTRIC PLANT FOR THE SUPPLYING OF ELECTRIC SERVICE IN THE ASSIGNED SERVICE TERRITORY AS ESTABLISHED PER MINNESOTA STATUTES CHAPTER 216B, AND AS IT MAY BE PROPERLY REVISED PURSUANT TO THE PROVISIONS OF CHAPTER 216B, WITHIN THE CORPORATE LIMITS OF SAID CITY AND AN ELECTRIC TRANSMISSION AND DISTRIBUTION SYSTEM CONSISTING OF POLES, WIRES, CONDUITS, PIPES, CONDUCTORS AND OTHER FIXTURES IN, UNDER, OVER, ALONG AND ACROSS THE STREETS, LANES, AVENUES, SIDEWALKS, ALLEYS, BRIDGES AND PUBLIC GROUNDS OF SAID CITY FOR THE PURPOSE OF PRODUCING AND FURNISHING ELECTRIC ENERGY FOR LIGHT, HEAT AND POWER PURPOSES TO THE INHABITANTS OF SAID CITY FOR A PERIOD OF TWENTY-FIVE (25) YEARS FROM AND AFTER THE PASSAGE, APPROVAL AND PUBLICATION OF THIS ORDINANCE ACCORDING TO LAW.

The City Council of Stewartville, Minnesota, do ordain as follows:

Section I. That there is hereby granted unto Interstate Power Company, a Delaware Corporation, its successors and assigns, herein called the "Grantee," the right, permission, privilege and franchise, for a period of twenty-five (25) years from and after the taking effect of this Ordinance, subject only to the laws of the State of Minnesota as now in force and to the conditions and limitations hereinafter contained, to erect, install, construct, reconstruct, repair, own, operate, maintain, manage and control an electric plant and an electric transmission and distribution system consisting of poles, wires, conduits, pipes, conductors and other fixtures, for the supplying of electric service in the assigned service territory and as it may be properly revised within the limits of said Municipality, necessary, convenient or proper for the production, transmission, distribution and delivery of electric energy to the inhabitants of said Municipality for light, heat and power purposes.

Section II. That said Grantee, its successors and assigns, is hereby granted the right-of-way in, under, over, along and across the streets, lanes, avenues, sidewalks, alleys, bridges and public grounds of said Municipality for the purpose of erecting, installing, constructing, reconstructing, repairing, owning, operating, maintaining, managing and controlling said electric plant and said electric transmission and distribution system.

Section III. That said Grantee shall hold said Municipality free and harmless of and from any and all liability, damages, actions and causes of action, caused by or through the neglect or mismanagement of the Grantee in the erection, installation, construction, reconstruction, repair, operation, maintenance, management or control of said electric plant and electric transmission and distribution system.

Section IV. That said Grantee shall not, during the erection, installation, construction, reconstruction, repair, operation and maintenance of said plant or transmission and distribution system, unnecessarily impede public travel on the streets, lanes, avenues, sidewalks, alleys, bridges and public grounds of said Municipality, and shall leave all of said streets, lanes, avenues, sidewalks, alleys, bridges and public grounds upon which it may enter for the purpose herein authorized in as good condition as they were at the date of said entry.

Section V. That said Grantee will extend service to any customer within the corporate limits of the Municipality in accordance with the Service Standards of Grantee as filed with the Public Service Commission of the Department of Public Service of the State of Minnesota.

Section VI. That whenever any person has obtained permission from the Municipality to move any building or structure which may interfere with the poles, wires or other fixtures of said Grantee, Grantee shall, upon five days' notice thereof, and at the expense of the person desiring to move such structure, remove such poles, wires or other fixtures as may be necessary to allow the passage of such structure, for a reasonable length of time, upon receipt from such person of satisfactory assurance covering the cost of such removal and replacement and any liability or damage resulting therefrom.

Section VII. That if any section or portion of a section of this Ordinance shall be declared null and void by any competent authority, the remaining portions hereof shall not be affected thereby.

Section VIII. That all ordinances or resolutions or parts thereof heretofore adopted by said Municipality in conflict with the terms hereof are hereby repealed.

Section IX. That said Ordinance shall take effect from and after its passage, approval and publication according to law.

APPROVED: March 27, 1990.

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Mayor of the City of Stewartville, Minnesota

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Clerk

(SEAL)

MINUTES OF A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF STEWARTVILLE, MINNESOTA

A Regular Meeting of the City Council of the City of Stewartville, County of Olmstead, State of Minnesota, was held at City Hall in said City on the 27th day of March, 1990, at 7 o'clock, P.M.

There were present:

Larry Gray, Mayor  
Don Amos                      R. C. Brown  
Carl Oelke                      Gary Stensrud

constituting all of the members of the Council.

The Mayor, Mr. Gray, called the meeting to order and presided thereat, and the Clerk, Mr. Larry Hansen acted as Clerk of the Meeting.

The Mayor stated that as this was a Regular Meeting, notice thereof was not necessary.

The Mayor stated that Interstate Power Company, a Delaware Corporation, had submitted a proposed Electric Franchise to be granted by the City of Stewartville, Minnesota, to said Interstate Power Company. He then presented a proposed Ordinance granting a Franchise to said Interstate Power Company, which Ordinance was fully read.

Councilman Brown then moved that the Ordinance as read be adopted as Ordinance No. 203. The Motion was seconded by Councilman Amos. A roll being called on said motion, the following voted "Aye":

Don Amos                      R. C. Brown  
Carl Oelke                      Gary Stensrud  
Larry Gray

and the following voted "Nay": None

The Mayor stated that the motion had been carried by a Unanimous vote of all of the members of the Council, and the Ordinance legally adopted as Ordinance No. 203. A copy of said Ordinance is attached hereto and made a part hereof.

There being no further business before the meeting, it was on motion duly made and unanimously carried, adjourned.

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City Clerk  
(SEAL)

STATE OF MINNESOTA  
CITY OF STEWARTVILLE  
CLERK'S CERTIFICATE

I, Larry Hansen, being the duly qualified and acting Clerk of the City of Stewartville, County of Olmstead, State of Minnesota, DO HEREBY CERTIFY that the above and foregoing is a true and correct copy of the Minutes of a Meeting of the City Council of said City held on the 27th day of March, 1990, insofar as they pertain to the granting of an Electric Franchise to the Interstate Power Company, a Delaware Corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said City this 27th day of March, 1990.

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CLERK

(SEAL)



CABLE FRANCHISE  
ORDINANCE NO. 212

AN ORDINANCE OF THE CITY OF STEWARTVILLE, MINNESOTA GRANTING A  
FRANCHISE TO GWC 73, INC. FOR THE CONSTRUCTION AND OPERATION OF A  
CABLE SYSTEM

The City of Stewartville, Minnesota, having determined that the financial, legal and technical  
ability of GWC 73, Inc. is reasonably sufficient to provide services, facilities and equipment  
necessary to meet the future cable-related needs of the community, does hereby ordain as follows:

- SECTION I. Definition of Terms
- SECTION II. Grant of Franchise
- SECTION III. Standards of Service
- SECTION IV. Regulation by Franchising Authority
- SECTION V. Compliance and Monitoring
- SECTION VI. Insurance, Indemnification and Bonds or Other Surety
- SECTION VII. Enforcement and Termination of Franchise
- SECTION VIII. Unauthorized Reception
- SECTION IX. Consumer Protection Provisions
- SECTION X. Miscellaneous Provisions

Adopted by the City Council this 11th day of May, 1993.

This publication is only a summary of the enacted ordinance, the full text is available for public  
inspection by any person during regular office hours at the office of the City Clerk, Stewartville  
City Hall, 105 East First Street. This ordinance shall be in full force and effect from and after its  
passage and publication.

\_\_\_\_\_  
Larry Gray  
Mayor

ATTEST:

\_\_\_\_\_  
Larry D. Hansen  
City Administrator

ORDINANCE NO.212

AN ORDINANCE OF THE CITY OF STEWARTVILLE, MINNESOTA GRANTING A FRANCHISE TO GWC 73, INC. FOR THE CONSTRUCTION AND OPERATION OF A CABLE SYSTEM

The City of Stewartville, Minnesota, having determined that the financial, legal and technical ability of GWC 73, Inc. is reasonably sufficient to provide services, facilities and equipment necessary to meet the future cable-related needs of the community, does hereby ordain as follows:

SECTION I  
Definition of Terms

1.1 Terms. For the purpose of this Ordinance, the following terms, phrases, words and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number:

- a. "Affiliate" means an entity which owns or controls, is owned or controlled by, or is under common ownership with Grantee.
- b. "Basic Cable Service" is the tier of service regularly provided to all Subscribers that includes the retransmission of local broadcast television signals.
- c. "Cable Act" means the Cable Communications Policy Act of 1984, as amended.
- d. "Cable Service" means (i) the one-way transmission to Subscribers of video programming or other programming service, and (ii) subscriber interaction, if any, which is required for the selection of such Video Programming or any other lawful communication service.
- e. "Cable System" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment or other communications equipment that is designed to provide Cable Service and other service to Subscribers.
- f. "Class IV Cable Communications Channel" means a signaling path provided by a cable communications system to transmit signals of any type from a Subscriber terminal to another point in the communications system.
- g. "FCC" means Federal Communications Commission, or successor governmental entity thereto.

- h. "Franchise" shall mean the initial authorization, or renewal thereof, issued by the Franchising Authority, whether such authorization is designated as a Franchise, permit, license, resolution, contract, certificate or otherwise, which authorizes construction and operation of the Cable System for the purpose of offering Cable Service or other service to Subscribers.
- i. "Franchising Authority" means the City of Stewartville, or the lawful successor, transferee, or assignee thereof.
- j. "Grantee" means GWC 73, Inc., or the lawful successor, transferee, or assignee thereof, as franchisee.
- k. "Gross Revenues" means the monthly Cable Service revenues received by Grantee from Subscribers of the Cable System in the Service Area; provided, however, that such phrase shall not include: (i) revenues received from national advertising carried on Cable System; (ii) any taxes on Cable Service which are imposed directly or indirectly on any Subscriber thereof by any governmental unit or agency, and which are collected by the Grantee on behalf of such governmental unit or agency.
- l. "Person" means an individual, partnership, association, joint stock company, trust, corporation or governmental entity.
- m. "Public Way" shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Franchising Authority in the Service Area which shall entitle the Franchising Authority and the Grantee to the use thereof for the purpose of installing, operating, repairing and maintaining the Cable System. Public Way shall also mean any easement now or hereafter held by the Franchising Authority within the Service Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the Franchising Authority and the Grantee to the use thereof for the purpose of installing or transmitting Grantee's Cable Service or other service over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, compliances, attachments and other property as may be ordinarily necessary and pertinent to the Cable System.
- n. "Service Area" means the present municipal boundaries of the Franchising Authority, and shall include any additions thereto by annexation or other legal means.

- o. "Service Tier" means a category of Cable Service or other services provided by Grantee and for which a separate charge is made by Grantee.
- p. "Subscriber" means a person or user of the Cable System who lawfully receives Cable Services or other service therefrom with Grantee's express permission.
- q. "Video Programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

SECTION II  
Grant of Franchise

2.1 Finding of Council. During full public proceeding affording reasonable notice and reasonable opportunity to be heard, the Grantee's technical ability, financial condition and legal qualification, were considered and approved by the Franchising Authority, pursuant to state law.

2.2 Grant. The Franchising Authority hereby grants to Grantee a non-exclusive Franchise which authorizes the Grantee to construct and operate a Cable System and offer Cable Service and other services in, along, among, upon, across, above, over, under or in any manner connected with Public Ways within the Service Area and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain or retain in, on, over, under, upon, across or along any Public Way and all extensions thereof and additions thereto, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments and other related property or equipment as may be necessary or appurtenant to the Cable System.

2.3 Term. The Franchise granted pursuant to this Ordinance shall be for an initial term of ten (10) years from the effective date of the Franchise as set forth in Section 2.4, unless otherwise lawfully terminated in accordance with the terms of this Ordinance.

2.4 Acceptance; Effective Date. Grantee shall accept the Franchise granted pursuant hereto by signing this Ordinance and filing same with the Franchise Authority Clerk or other appropriate official or agency of the Franchising Authority within sixty (60) days after the passage and final adoption of this Ordinance.

Subject to the acceptance by Grantee, the effective date of this Ordinance shall be the sixtieth day after its passage and final adoption.

2.5 Favored Nations. No municipality shall grant an additional franchise for cable service for an area included in an existing franchise on terms and conditions more favorable or less burdensome than those in the existing franchise pertaining to: (1) the area served; (2) public, educational or governmental access requirements; or (3) franchise fees.

2.6 Compliance with Laws and Regulations. The provisions of this franchise shall be subject to applicable federal, state and local law. This Franchise complies with the Franchise standards contained in Minnesota Statutes Annotated (M.S.A.), Chapter 238; provided, however, if any provisions of M.S.A. 238 conflict with the Cable Communications Act of 1984, as amended, ("Cable Act") or other applicable federal law or rulings, the provisions of the Cable Act or such other federal law or ruling shall have precedence. Grantee and the Franchising Authority shall conform to all state laws, rules and regulations regarding cable communications not later than one (1) year after they become effective, unless otherwise stated, and shall further conform to all federal laws and regulations regarding cable as they become effective. If however, a shorter compliance time is provided for, or required by, such laws, rules and regulations, then, in such case, such shorter period shall control.

### SECTION III Standards of Service

3.1 Construction Standards. Grantee shall not commence construction of a cable communications system, or the maintenance and repair of a cable communications system which would open or disturb the surface of any street, sidewalk, driveway or public place without first obtaining a permit from the proper municipal authority. If Grantee fails to meet the conditions of the permit, the Franchising Authority shall have the right to put the street or public place back into the condition which existed immediately prior to use by the Grantee at the reasonable expense of the Grantee. Such permit shall not be unreasonably withheld.

All wires, conduits, cable and other property and facilities of the Grantee shall be so located, constructed, installed and maintained so as not to endanger or unnecessarily interfere with the usual and customary trade, traffic and travel upon any of the Franchising Authority's Public Ways. Grantee shall maintain the system in good repair, and the same shall be subject to the inspection of the Franchising Authority, or its representatives pursuant to the procedures set forth in Section V, 5.1.

3.2 Conditions of Street Occupancy. All transmission and distribution structures, poles, other lines and equipment installed or erected by the Grantee pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of Public Ways and with the rights and reasonable convenience of property owners who own property that adjoins any of said Public Ways.

3.3 Restoration of Public Ways. If during the course of Grantee's construction, operation or maintenance of the Cable System there occurs a disturbance of any Public Way by Grantee, it shall, at its expense, replace and restore such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to such disturbance. In the event the Grantee does not do so within ten (10) days prior written notice to the Grantee, the City may restore the Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to such disturbance, with all expenses to be paid by the Grantee.

3.4 Relocation at Request of Franchising Authority. Upon its receipt of reasonable advance notice, not to be less than five (5) business days, the Grantee shall, at its own expense, protect, support, temporarily disconnect, relocate in the Public Way, or remove from the Public Way, any property of the Grantee when lawfully required by Franchising Authority by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of structures or improvements by the Franchising Authority. If public funds are available to any company using such street, easement, or right-of-way for the purpose of defraying the cost of any of the foregoing, such funds shall also be made available to the Grantee.

3.5 Relocation at Request of Third Party. The Grantee shall, on the request of any person holding a building moving permit issued by the Franchising Authority, temporarily raise or lower its wires to permit the moving of such building, provided: (a) the expense of such temporary raising or lowering of wires is paid by said person, including, if required by the Grantee, making such payment in advance; and (b) the Grantee is given not less than ten (10) business days advance written notice to arrange for such temporary wire changes.

3.6 Trimming of Trees and Shrubbery. The Grantee shall have the authority to trim trees or other natural growth overhanging any of its Cable System in the Service Area so as to prevent branches from coming in contact with the Grantee's wires, cables or other equipment. Grantee shall be permitted to charge persons who own, or are responsible for, such trees or natural growth for the cost of such trimming, provided that similar charges are assessed by and paid to the utilities or the Franchising Authority for tree trimming. The Grantee shall reasonably compensate the Franchising Authority or property owner for any damages caused by such trimming, or shall, in its sole discretion and at its own cost and expense, reasonably replace all trees or shrubs damaged as a result of any construction of the Cable System undertaken by Grantee. Such replacement shall satisfy any and all obligations Grantee may have to the Franchising Authority or property owner pursuant to the terms of this section.

3.7 Use of Grantee's Equipment by Franchising Authority. Subject to any applicable state or federal regulations or tariffs, the Franchising Authority shall have the right to make additional use, for any public purpose, of any poles or conduits controlled or maintained exclusively by or for the Grantee in any Public Way; provided that (a) such use by the Franchising Authority does not interfere with a current or future use by the Grantee; (b) the Franchising Authority holds the Grantee harmless against and from all claims, demands, costs, or liabilities of every kind and nature whatsoever arising out of such use of said poles or conduits, including but not limited to, reasonable attorney's fees and costs; and (c) the Franchising Authority may be required either to pay a reasonable rental fee or otherwise reasonably compensate Grantee for the use of such poles, conduits or equipment; provided, however, that Grantee agrees that such compensation or charge shall not exceed those paid by it to public utilities pursuant to the applicable pole attachment agreement or other authorization relating to the Service Area.

3.8 Safety Requirements. Construction, installation and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. All such work shall be performed in accordance with applicable FCC or other federal, state and local regulations. The Cable System shall not unreasonably endanger or interfere with the safety of persons or property in the Service Area.

3.9 Aerial and Underground Construction. In those areas of the Service Area where all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are underground, the Grantee likewise shall construct, operate and maintain all of its transmission and distribution facilities underground; provided that such facilities are actually capable of receiving Grantee's cable and other equipment without technical degradation of the Cable System's signal quality. In those areas of the Service Area where the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are both aerial and underground, Grantee shall have the sole discretion to construct, operate and maintain all of its transmission and distribution facilities, or any part thereof, aerially or underground, provided that such work is performed only after prior notice to and approval from the Franchising Authority. Nothing contained in this section shall require Grantee to construct, operate and maintain underground any ground-mounted appurtenances such as subscriber taps, line extenders, system passive devices (splitters, directional couplers), amplifiers, power supplies, pedestals or other related equipment. Notwithstanding anything to the contrary contained in this section, in the event that all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are placed underground after the effective date of this Ordinance, Grantee shall only be required to construct, operate and maintain all of its transmission and distribution facilities underground if it is given reasonable notice and access to the public utilities, facilities at the time that such are placed underground.

3.10 Required Extensions of Service. The Cable System as constructed as of the date of the passage and final adoption of this Ordinance substantially complies with the material provisions hereof, Grantee is hereby authorized to extend the Cable System as necessary, as desirable, or as required pursuant to the terms hereof within the Service Area. Whenever Grantee shall receive a request for service from at least fifteen (15) Subscribers within 1,320 cable-bearing strand feet (one-quarter cable mile) of its trunk or distribution cable, it shall extend its Cable System to such Subscribers at no cost to said Subscribers for system extension, other than the usual connection fees for all Subscribers; provided that such extension is technically feasible, and if it will not adversely affect the operation, financial condition or market development of the Cable System, or as provided for under Section 3.11 of this Ordinance.

3.11 Subscriber Charges for Extensions of Service. No Subscriber shall be refused service arbitrarily. However, for unusual circumstances, such as a Subscriber's request to locate his cable drop underground, existence of more than one hundred fifty (150) feet of distance from distribution cable to connection of service to Subscribers, or a density of less than fifteen (15) Subscribers per 1,320 cable-bearing strand feet of trunk or distribution cable, Cable Service or other service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor and easements. For the purpose of determining

the amount of capital contribution in aid of construction to be borne by Grantee and Subscribers in the area in which Cable Service may be expanded, Grantee will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of potential Subscribers per 1,320 cable-bearing strand feet of its trunk or distribution cable, and whose denominator equals fifteen (15) Subscribers. Potential Subscribers will bear the remainder of the construction and other costs on a pro rata basis. Grantee may require that the payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance.

3.12 Service to Public Buildings. The Grantee shall provide without charge, one (1) outlet of Basic Service to the Franchising Authority's office building (s), fire station (s), police station (s), civic center (s), nursing home (s) and public school building (s) that are passed by its Cable System. The outlets of Basic Cable Service shall not be used to distribute or sell Cable Services in or throughout such buildings; nor shall such outlets be located in common or public areas open to the public. Users of such outlets shall hold Grantee harmless from any and all liability or claims arising out of their use of such outlets, including but not limited to, those arising from copyright liability. Notwithstanding anything to the contrary set forth in this section, the Grantee shall not be required to provide an outlet to such buildings where the drop line from the feeder cable to said buildings or premises exceeds one hundred fifty (150) cable feet, unless it is technically feasible and so long as it will not adversely affect the operation, financial condition or market development of the Cable System to do so, or unless the appropriate governmental entity agrees to pay the incremental cost of such drop line in excess of 150 cable feet. In the event that additional outlets of Basic Cable Service are provided to such buildings, the building owner shall pay the usual installation fees associated therewith, including, but not limited to, labor and materials. Upon request of Grantee, the building owner may also be required to pay the service fees associated with the provision of Basic Cable Service and the additional outlets relating thereto.

3.13 Emergency Override. In the case of any emergency or disaster, the Grantee shall, upon request of the Franchising Authority, make available its facilities for the Franchising Authority to provide emergency information and instructions during the emergency or disaster period. The Franchising Authority shall hold the Grantee, its agents, employees, officers and assigns hereunder, harmless from any claims arising out of the emergency use of its facilities by the Franchising Authority.

3.14 Channel Capacity. The Grantee shall provide a Cable System with a channel capacity of fifty-four (54) channels available for immediate or potential use.

3.15 Public, Educational and Governmental Access Channel. The Grantee shall provide to each of its Subscribers who receive Basic Cable services offered on the Cable System, reception on at least one specially designated access channel available for use by the general public on a first-come, first-served, nondiscriminatory basis. During those hours that the specially designated access channel is not being used by the general public, local educational authorities, or local government, the Grantee may use this specially designated access channel.



Whenever such specially designated access channel is in use during eighty percent (80%) of the weekdays, Monday through Friday, for eighty percent (80%) of the time during any consecutive three-hour period for six (6) consecutive weeks, Grantee shall provide upon demand and within a six-month period, an additional channel or channels for public, educational, or governmental access, provided such channel or channels do not require the cable system to install converters.

Upon need being shown, Grantee shall provide for use by the public at least the minimal equipment necessary to perform good quality playback of pre-recorded programming and to enable recording of programs at remote locations with the use of portable battery-operated equipment. For the purpose of this provision, need is established when at least ten percent (10%) of the Subscribers of the Cable System have signed a petition; provided, however, such petition must contain the signatures of no fewer than one hundred (100) Subscribers and no more than three hundred fifty (350) Subscribers.

The Grantee shall establish rules for the administration of the specially designated access channel.

3.16 Two-Way System. Grantee shall provide a cable communications system having the technical capacity for non-voice return communications.

#### SECTION IV

#### Regulation by Franchising Authority

##### 4.1 Franchise Fee.

A. Grantee shall pay to the Franchising Authority a Franchise fee equal to not less than three percent (3%) and not more than five percent (5%) of gross revenues received by Grantee from Basic and Expanded Basic Cable Services on an annual basis payable quarterly; provided, however, that Grantee may credit against any such payments: (i) any tax, fee, or assessment of any kind imposed by Franchising Authority or other governmental entity on a cable operator, or Subscriber, or both, solely because of his status as such; (ii) any tax, fee or assessment of general applicability which is unduly discriminatory against cable operators or Subscribers (including any such tax, fee, or assessment imposed, both on utilities and cable operators and their services) , and (iii) any other special tax, assessment, or fee such as a business, occupation, and entertainment tax. For the purpose of this section, the 12-month period applicable under the Franchise for the computation of the Franchise fee shall be the calendar year, unless otherwise agreed to in writing by the Franchising Authority and Grantee. The Franchise fee payment shall be due and payable quarterly within sixty (60) days after the end of each such quarter ending March 31, June 30, September 30 and December 31 of each year. Each payment shall be accompanied by a brief report from a representative of Grantee showing the basis for the computation. The Franchising Authority may review Grantee's books and records to confirm the basis for the computation of franchise fees, pursuant to the provisions set forth in Section 5.3.

B. Limitation on Franchise Fee Actions. The period of limitation for recovery of any Franchise fee payable hereunder shall be five (5) years from the date on which payment by the Grantee is due. Unless within five (5) years from and after said payment due date the Franchising Authority initiates a lawsuit for recovery of such Franchise fee in a court of competent jurisdiction, such recovery shall be barred, and the Franchising Authority shall be stopped from asserting any claims whatsoever against the Grantee relating to any such alleged deficiencies.

4.2 Rates and Charges. The Franchising Authority may not regulate the rates for the provision of Cable Service and other services, including, but not limited to, ancillary charges relating thereto, except as expressly provided herein and except as authorized pursuant to federal and state law including, but not limited to, the Cable Act and FCC Rules and Regulations relating thereto. From time to time, and at any time, Grantee has the right to modify its rates and charges including, but not limited to, the implementation of additional charges and rates; provided, however, that Grantee shall give notice to the Franchising Authority of any such modifications or additional charges thirty (30) days prior to the effective date thereof.

A schedule of the current Subscriber charges, as well as the form of residential Subscriber contract, specifying the current length and term of subscriber contracts, shall be kept on file, and available for public inspection during normal office hours, at the local office of Grantee.

4.3 Renewal of Franchise. The Franchising Authority and the Grantee agree that any proceedings undertaken by the Franchising Authority that relate to the renewal of the Grantee's Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, as amended, unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of federal or state law.

In addition to the procedures set forth in said Section 626(a), the Franchising Authority agrees to notify Grantee of its preliminary assessments regarding the identity of future cable-related community needs and interests, as well as the past performance of Grantee under the then current Franchise term. The Franchising Authority further agrees that such a preliminary assessment shall be provided to the Grantee prior to the time that the four (4) month period referred to in Subsection (c) of Section 626 is considered to begin. Notwithstanding anything to the contrary set forth in this section, the Grantee and Franchising Authority agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment, the Franchising Authority and Grantee may agree to undertake and finalize negotiations regarding renewal of the then current Franchise and the Franchising Authority may grant a renewal thereof. The Grantee and the Franchising Authority consider the terms set forth in this section to be consistent with the express provisions of Section 626 of the Cable Act, as amended.

4.4 Abandonment. The Grantee shall not abandon any portion of its Cable System without giving three (3) months prior written notice to the Franchising Authority. Further, Grantee may not abandon any portion of the Cable System without compensating the Franchising Authority for reasonable damages resulting from the abandonment.

4.5 Conditions of Sale. Except to the extent expressly required by federal or state law, if a renewal or extension of Grantee's Franchise is denied or the Franchise is lawfully terminated, and the Franchising Authority either lawfully acquires ownership of the Cable System or by its actions lawfully effects a transfer of ownership of the Cable System to another party, any such acquisition or transfer shall be at a fair market value, determined on the basis of the Cable System valued as a going concern.

If the Franchise or cable system is offered for sale, the Franchising Authority shall also have the right to purchase the system at its fair market value.

Grantee and Franchising Authority agree that in the case of a lawful revocation of the Franchise, at Grantee's request, which shall be made in its sole discretion, Grantee shall be given a reasonable opportunity to effectuate a transfer of its Cable System to a qualified third party. The Franchising Authority further agrees that during such a period of time, it shall authorize the Grantee to continue to operate pursuant to the terms of its prior Franchise; however, in no event shall such authorization exceed a period of time greater than six (6) months from the effective date of such revocation. If, at the end of that time, Grantee is unsuccessful in procuring a qualified transferee or assignee of its Cable System which is reasonably acceptable to the Franchising Authority, Grantee and Franchising Authority may avail themselves of any rights they may have pursuant to federal or state law; it being further agreed that Grantee's continued operation of its Cable System during the six (6) month period shall not be deemed to be a waiver, nor an extinguishment of, any rights of either the Franchising Authority or the Grantee. Notwithstanding anything to the contrary set forth in this section, neither Franchising Authority nor Grantee shall be required to violate federal or state law.

4.6 Removal of Property. Upon termination or forfeiture of this Franchise, Grantee shall, if the Franchising Authority so requests, remove all of its cables, wires and appliances from the streets, alleys and other public places, with the exception of those portions of said cables, wires and appliances as are then being utilized and operated by Grantee under any other lawful and effective governmental permit or license. If the same are not so removed, the Franchising Authority may cause the same to be removed and recover the reasonable costs thereof from Grantee.

4.7 Transfer of Franchise. Neither Grantee's right, title or interest in this Franchise, nor the Cable System for which it is granted, shall be sold transferred, assigned, or otherwise encumbered, other than to an Affiliate, except with the approval of the Franchising Authority, which approval shall not be unreasonably withheld. Such sale or transfer or creation of a new controlling interest shall be completed pursuant to applicable federal and state law. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title or interest of Grantee in the Franchise or Cable System in order to secure indebtedness.

4.8 Continuing Administration Responsibility. The office of the City Administrator shall be responsible for the continuing administration of this Franchise.

SECTION V  
Compliance and Monitoring

5.1 Testing for Compliance. The Franchising Authority may perform technical tests of the Cable System during reasonable times and in a manner which does not unreasonably interfere with the normal business operations of the Grantee or the Cable System in order to determine whether or not the Grantee is in compliance with the terms hereof and applicable state or federal laws. Except in emergency circumstances, such tests may be undertaken only after giving Grantee reasonable notice thereof, not to be less than two (2) business days, and providing a representative of Grantee an opportunity to be present during such tests. In the event that such testing demonstrates that the Grantee has substantially failed to comply with a material requirement hereof, the reasonable costs of such tests shall be borne by the Grantee. In the event that such testing demonstrates that Grantee has substantially complied with such material provisions hereof, the cost of such testing shall be borne by the Franchising Authority. Except in emergency circumstances, the Franchising Authority agrees that such testing shall be undertaken no more than two (2) times a year in the aggregate, and that the results thereof shall be made available to the Grantee upon Grantee's request.

5.2 Technical Standards. The technical standards promulgated by the FCC relating to cable communications systems contained in Subpart K of Part 76 of FCC rules and regulations are herein incorporated by reference, as the same now provides, and may from time to time be hereafter amended. The results of such tests required by the FCC must be filed with the Franchising Authority within ten (10) days of the conduct of the tests.

5.3 Books and Records. The Grantee agrees that the Franchising Authority, upon reasonable notice, may review such of its books and records, during normal business hours and on a nondisruptive basis, as is reasonably necessary to monitor compliance with the terms hereof. Such records shall include, but shall not be limited to, accounting and financial records that may be reasonably necessary to monitor compliance with the material provisions of the Franchise, location maps and any public records required to be kept by the Grantee pursuant to the rules and regulations of the FCC. The Grantee shall file with the Franchising Authority annually reports of gross Subscriber revenues and such other information as the Franchising Authority reasonably deems necessary for enforcement of the Franchise. Notwithstanding anything to the contrary set forth herein, Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. The Franchising Authority agrees to treat any information disclosed by the Grantee to it as confidential and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof.

## SECTION VI

### Insurance, Indemnification and Bonds or Other Surety

6.1 Insurance Requirements. Grantee shall maintain in full force and effect, at its own cost and expense, during the term of the Franchise, Comprehensive General Liability Insurance in the amount of \$1,000,000 combined single limit for bodily injury and property damage. Said insurance shall designate the Franchising Authority as an additional insured. Such insurance shall be non-cancelable except upon thirty (30) days prior written notice to the Franchising Authority.

6.2 Indemnification. The Grantee agrees to indemnify, save and hold harmless, and defend the Franchising Authority, its officers, boards and employees, from and against any liability for damages and for any liability or claims resulting from property damage or bodily injury (including accidental death), which arise out of the Grantee's construction, operation or maintenance of its Cable System, including, but not limited to, reasonable attorney's fees and costs; provided, however, that nothing contained in this Franchise Ordinance shall relieve any person from liability arising out of the failure to exercise reasonable care to avoid injury to the Grantee's facilities while performing any work connected with grading, regrading or changing the line of any street or public place, or with the construction or reconstruction of any sewer or water system. The indemnification requirements of this section specifically include the safety requirements as set forth in Section 3.8.

6.3 Surety Guarantee. At all times hereunder until the Grantee has liquidated all of its obligations under the Franchise to the Franchising Authority, the Grantee shall furnish a bond or other surety in the amount of \$10,000, conditioned upon the faithful performance by the Grantee of its material obligations under this Franchise. The Franchising Authority may, from year to year and in its sole discretion, reduce the amount of any such bond or other surety.

## SECTION VII

### Enforcement and Termination of Franchise

7.1 Notice of Violation. In the event that the Franchising Authority believes that the Grantee has not complied with the terms of the Franchise, it shall notify Grantee in writing of the exact nature of the alleged noncompliance.

7.2 Grantee's Right to Cure or Respond. Grantee shall have thirty (30) days from receipt of the notice described in Section 7.1: (a) to respond to the Franchising Authority contesting the assertion of noncompliance or; (b) to cure such default or; (c) in the event that, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the Franchising Authority of the steps being taken and the projected date that they will be completed.

7.3 Public Hearing. In the event that Grantee fails to respond to the notice described in Section 7.1 pursuant to the procedures set forth in Section 7.2, or in the event that the alleged default is not remedied within sixty (60) days after the Grantee is notified of the alleged default pursuant to Section 7.1, the Franchising Authority shall schedule a public meeting to investigate

the default. Such public meeting shall be held at the next regularly scheduled meeting of the Franchising Authority which is scheduled at a time which is not less than five (5) business days therefrom. The Franchising Authority shall notify the Grantee of the time and place of such meeting and provide the Grantee with an opportunity to be heard.

7.4 Enforcement. Subject to applicable federal and state law, in the event the Franchising Authority, after such meeting, determines that Grantee is in default of any provision of the Franchise, the Franchising Authority may:

- a. Foreclose on all or any part of any security provided under this Franchise, if any, including without limitation, any bonds or other surety; provided, however, the foreclosure shall only be in such a manner and in such amount as the Franchising Authority reasonably determines is necessary to remedy the default;
- b. Commence an action at law for monetary damages or seek other equitable relief;
- c. In the case of a substantial default of a material provision of the Franchise, any attempt by Grantee to evade the provisions of the Franchise, or Grantee practices fraud or deceit upon the Franchising Authority, declare the Franchise Agreement, and the rights and privileges thereof, to be revoked; or
- d. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages.

Any such determination by the Franchising Authority shall be subject to a de novo review by a court of competent jurisdiction.

The Grantee shall not be relieved of any of its obligations to comply promptly with any provision of the Franchise by reason of any failure of the Franchising Authority to enforce prompt compliance.

7.5 Acts of God. The Grantee shall not be held in default or noncompliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating thereto, where such noncompliance or alleged defaults are caused by strikes, acts of God, power outages, or other events reasonably beyond its ability to control.

## SECTION VIII Unauthorized Reception

8.1 Misdemeanor. In addition to those criminal and civil remedies provided by state and federal law, it shall be a misdemeanor for any person, firm or corporation to create or make use of any unauthorized connection, whether physically, electrically, acoustically, inductively, or otherwise, with any part of the Cable System without the express consent of the Grantee. Further, without the express consent of Grantee, it shall be a misdemeanor for any person to tamper with, remove, or injure any property, equipment, or part of the Cable System or any means of receiving Cable Service or other services provided thereto.

SECTION IX  
Consumer Protection Provisions

9.1 Subscriber Privacy. No signal of a Class IV cable communications channel may be transmitted from a Subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the Subscriber. Such permission is only valid for one (1) year and must be renewed on an annual basis. Written permission from the Subscriber shall not be required for the systems conducting system-wide or individually addressed electronic sweeps for the purpose of verifying system integrity or monitoring for the purpose of billing.

9.2 Subscriber Complaints and Repairs. The Grantee shall maintain a toll free or collect telephone number for the reception of complaints. All complaints regarding quality of service, equipment malfunction, billing disputes, or any other matters relative to the cable communications system shall be responded to by the Grantee whenever possible within twenty-four (24) hours of notice to the Grantee. The Grantee shall maintain a repair service capable of responding to Subscriber complaints or requests for repairs within twenty-four (24) hours after receipt of said complaints or requests. The Grantee shall resolve the complaint, if reasonably possible, within five (5) working days. Costs for making such repairs shall be borne by the Grantee unless otherwise provided in the Subscriber's contract, or unless said repairs are necessitated by the negligence or deliberate acts of the Subscriber. In such cases, the Subscriber shall bear the costs. Installation charges shall be borne by the Subscriber. The Subscriber may also file his or her complaint with the office of the City Administrator who shall have primary responsibility for the continuing administration of this franchise and the procedures for resolving complaints.

SECTION X  
Miscellaneous Provisions

10.1 Preemption. If the FCC, or any other federal or state body or agency shall now or hereafter exercise any paramount jurisdiction over the subject matter of the Franchise, then to the extent such jurisdiction shall preempt and supersede or preclude the exercise of the like Jurisdiction by the Franchising Authority, the jurisdiction of the Franchising Authority shall cease and no longer exist.

10.2 Amendments of Federal and State Laws. In the event federal and state laws are enacted in the future which permit additional regulatory authority by Franchising Authorities, Grantee and Franchising Authority agree to negotiate in good faith and consider modification of this Franchise to incorporate such changes.

10.3 Actions of Franchising Authority. In any action by the Franchising Authority or representative thereof mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

10.4 Notice. Unless expressly otherwise agreed between the parties, every notice or response to be served upon the Franchising Authority or Grantee shall be in writing, and shall be deemed to have been duly given to the required party five (5) business days after having been posted in a properly sealed and correctly addressed envelope by certified or registered mail, postage prepaid, at a post office or branch thereof regularly maintained by the U.S. Postal Service.

The notices or responses to the Franchising Authority shall be addressed as follow:

City of Stewartville  
417 S. Main  
Stewartville, Minnesota 55976.

The notices or responses to the Grantee shall be addressed as follows:

GWC 73, Inc.  
117 E. Center Street  
P.O. Box 69  
Rochester, Minnesota 55904;

With a copy to:

TCI GREAT LAKES, INC.  
111 Pfingsten Rd., Suite 400  
Deerfield, IL 60015  
ATTN: FRANCHISING

Franchising Authority and the Grantee may designate such other address or addresses from time to time by giving notice to the other.

10.5 Descriptive Headings. The captions to sections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.

10.6 Severability. If any section, sentence, paragraph, term or provision hereof is determined to be illegal, invalid or unconstitutional by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise or any renewal or renewals thereof.

Passed and adopted this 11th day of May, 1993 subject to applicable federal, state and local law.



WITNESS:

CITY OF STEWARTVILLE, MINNESOTA

\_\_\_\_\_  
Larry Hansen

By: \_\_\_\_\_  
Larry Gray, Mayor

Accepted this 6th day of July, 1993, subject to applicable federal, state and local law.

WITNESS:

GWC 73, INC.

\_\_\_\_\_

By: \_\_\_\_\_  
Allan H. Goodson, Vice President/COO

5/11/93

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Ordinance No. 2003-11

An Ordinance granting Aquila, Inc., d/b/a Aquila Networks,  
a Delaware corporation, its successors and assigns,  
a natural gas franchise  
and the authority to construct, operate, maintain, and extend  
a natural gas distribution plant and system,  
and granting the right to use the streets, alleys, and other public places  
within the present or future corporate limits  
of the City of Stewartville Minnesota

Be it ordained by the City Council of the City of Stewartville, as follows:

**FRANCHISE GRANTED**

The City of Stewartville, (hereinafter referred to as “Grantor”) hereby grants a non-exclusive franchise to Aquila, Inc, d/b/a Aquila Networks, a Delaware corporation, (hereinafter called “Grantee”), its lessees, successors and assigns. Grantee is hereby granted the right, privilege, franchise, permission and authority to lay, construct, install, maintain, operate and extend in, along, over or across the present and future streets, alleys, avenues, bridges, public rights-of-way and public places as are now within the present or future limits of said Grantor, a natural gas distribution system and all facilities necessary for the purpose of supplying natural gas or processed gas for all purposes to the inhabitants of said Grantor and consumers in the vicinity thereof, and for the distribution of natural gas from or through said Grantor to points beyond the limits thereof. Such facilities shall include, but not be limited to, all mains, services, pipes, conduits and appliances necessary or convenient for transmitting, transporting, distributing and supplying natural gas for all purposes for which it may be used, and to do all other things necessary and proper in providing natural gas service to the inhabitants of Grantor and in carrying on such business.

**TERM**

The rights and privileges granted by this Ordinance shall remain in effect for a period of 20 years from the effective date of this Ordinance.

**FRANCHISE FEES**

Subdivision 1. The laws of the State of Minnesota authorize a payment of compensation to a city by the provider of natural gas services in the form of the imposition of a city franchise fee to raise revenue or to defray costs accruing as a result of such operations, or both. This payment is commonly referred to as a franchise fee.

Subd. 2. During the term of the Franchise, and as a condition of its grant, a City franchise fee is hereby imposed on the Company as indicated in the table below. The volumetric fee rate is per 100 cubic feet of gas by volume, transported, sold, furnished or delivered by Company to a retail customer located within the current and future limits of City, utilizing any of the Company’s services or facilities.

	<i>Commercial</i>	<i>Industrial</i>	<i>Interruptible</i>	<i>Residential</i>
<i>Flat Fee (annual) per meter</i>	<i>\$ 6.00</i>	<i>\$ 6.00</i>	<i>\$ 6.00</i>	<i>\$ 6.00</i>
<i>Volumetric Fee (per 100 cu.ft volume)</i>	<i>\$ 0.0015</i>	<i>\$ 0.0015</i>	<i>\$ 0.0015</i>	<i>\$ 0.0015</i>

Subd. 3. The Franchise Fee shall be adjusted for net write-off of uncollectible accounts and corrections of bills theretofore rendered. The Company may list the local franchise fee collected from customers as a separate item on bills for utility service issued to customers.

Subd. 4. The franchise fee shall be effective ninety days following adoption of this Ordinance and shall continue until amended or repealed by the City during the term of this Ordinance. Initial and final payments shall be prorated for the portions of the periods at the beginning and end of the term of this Ordinance.

The Company must report and pay the franchise fee to the City on a quarterly basis. Such payment shall be made not more than thirty days following the close of the period for which payment is due. Company shall provide information by customer class to City to show how the fee was determined.

The franchise fee rates provided may be adjusted annually for inflation, based upon the most recent Urban Consumer Price Index inflation adjustment rates. Such adjustment shall not require formal amendment to this Ordinance.

If any person challenges the collection, any aspect of the franchise fee or any other payment to be made to City pursuant to this Franchise, the Company must promptly give notice to City and must, in any case, diligently and continuously exercise its efforts to sustain said fee and payments and the time and manner of its collection. If at any time the MPUC, or other authority having proper jurisdiction, prohibits recovery of the franchise fee costs, then the Company will no longer be obligated to collect and pay the franchise fee. The Company agrees to make its records related to the calculation and payment of the franchise fee available for inspection by the City at reasonable times.

If for any reason the amount or rate of the franchise fee is determined to be in excess of the amount or rate allowed by law, then the amount or rate shall automatically, and without further action by City or Company, be reduced to the maximum amount or rate permitted by law.

The franchise fee is in lieu of any other permit or licensing fee, charge or cost imposed by the City on the Company for providing gas service or performing work necessary to provide gas service. The City cannot charge the Company any right-of-way fee imposed by a right-of-way ordinance or other ordinance or City practice during this franchise term.

**GOVERNING RULES AND REGULATIONS**

This Ordinance is granted subject to all conditions, limitations and immunities now provided for, or as hereafter amended, and applicable to the operations of a public utility, by State or Federal law. The rates to be charged by Grantee for service within the present or future corporate limits of Grantor and the rules and regulations regarding the character, quality and standards of service to be furnished by Grantee shall be under the jurisdiction and control of such regulatory body or bodies as may, from time to time, be vested by law with authority and jurisdiction over the rates, regulations and quality and standards of service to be supplied by Grantee. Provided however, should any judicial, regulatory or legislative body, having proper jurisdiction, take any action that precludes Grantee from recovering from its customers any cost associated with services provided hereunder, then Grantee and Grantor shall renegotiate the terms of this Ordinance in accordance with the action taken, so as to allow Grantee to be made whole economically. In determining the rights and duties of the Grantee, the terms of this franchise Ordinance shall take precedence over any conflicting terms or requirements contained in any other Ordinance enacted by the Grantor.

If an energy supplier is unable to furnish an adequate supply of energy due to an emergency, an order or decision of a public regulatory body, or other acts beyond the control of the Grantee, then the Grantee shall have the right and authority to adopt reasonable rules and regulations limiting, curtailing or allocating extensions of service or supply of energy to any customers or prospective customers, and withholding the supply of energy to new customers, provided that such rules and regulations shall be uniform as applied to each class of customers or prospective customers, and shall be non-discriminatory as between communities receiving service from the Grantee.

**CONSTRUCTION AND MAINTENANCE OF COMPANY FACILITIES**

Any pavements, sidewalks or curbing taken up and any and all excavations made shall be done in such a manner as to cause only such inconvenience to the inhabitants of Grantor and to the general public as is reasonably necessary; and repairs and replacements shall be made promptly by Grantee, leaving such properties in as good as condition as existed immediately prior to excavation.

Grantee agrees that for the term of this grant, it will use its best efforts to maintain facilities and equipment sufficient to meet the current and future energy requirements of Grantor, its inhabitants and industries. While maintaining its facilities and equipment, Grantee shall obtain permits as required by ordinance, except that in emergency situations, Grantee shall take immediate unilateral actions as it determines are necessary to protect the public health, safety, and welfare; in which case, Grantee shall notify Grantor as soon as reasonably possible.

Grantor will give Grantee reasonable notice of plans for street improvements where paving or resurfacing of a permanent nature is involved that affect Grantee's facilities. The notice shall contain the nature and character of the improvements, the rights-of-way upon which the improvements are to be made, the extent of the improvements and the time when the Grantor will start the work, and, if more than one right-of-way is involved, the order in which this work is to proceed. The notice shall be given to the Grantee a sufficient length of time, considering reasonable working conditions, in advance of the actual commencement of the work to permit the Grantee to make any additions, alterations, or repairs to its facilities.

**EXTENSION OF COMPANY FACILITIES**

Upon receipt and acceptance of a valid application for service, Grantee shall, subject to its own economic feasibility criteria, make reasonable extensions of its distribution facilities to serve customers located within the current or future corporate limits of Grantor.

**RELOCATION OF COMPANY FACILITIES**

If Grantor elects to change the grade of or otherwise alter any street, alley, avenue, bridge, public right-of-way or public place for a public purpose, Grantee, upon reasonable notice from Grantor, shall remove and relocate its facilities or equipment situated in the public rights-of-way, if such removal is necessary to prevent interference and not merely for the convenience of the Grantor, at the cost and expense of Grantee. If Grantor orders or requests Grantee to relocate its facilities or equipment for the primary benefit of a commercial or private project, or as a result of the initial request of a commercial or private developer or other non-public entity, and such removal is necessary to prevent interference and not merely for the convenience of the Grantor or other right-of-way user, Grantee shall receive payment for the cost of such relocation as a precondition to relocating its facilities or equipment. Grantor shall consider reasonable alternatives in designing its public works projects so as not arbitrarily to cause Grantee unreasonable additional expense in exercising its authority under this section. Grantor shall also provide a reasonable alternative location for Grantee's facilities. Grantor shall give Grantee written notice of vacating of a public right-of-way. Vacating of a public right-of-way shall not deprive the Grantee of its right to operate and maintain existing facilities, until the reasonable cost of relocating the same are first paid to the Grantee.

Any person or corporation desiring to move a building or other structure along, or to make any unusual use of any street, alley, avenue, bridge, public right-of-way or public place which shall interfere with the facilities or equipment of the Grantee, shall first give notice to the Grantor and the Grantee and pay a sum sufficient to cover the expense and damage incident to the moving of Grantee's facilities and equipment.

**CONFIDENTIAL INFORMATION**

Grantor acknowledges that certain information it might request pursuant to this franchise may be of a proprietary and confidential nature. If Grantee requests that any information provided by Grantee to Grantor be kept confidential due to such proprietary or commercial value, Grantor and its employees, agents, and representatives shall maintain the confidentiality of that information, to the extent allowed by law. If Grantor is requested or required by legal or administrative process to disclose any such confidential information, Grantor shall promptly notify Grantee of such request or requirement so that Grantee may seek an appropriate protective order or other relief. Grantor shall use all reasonable efforts to ensure that the confidentiality of Grantee's confidential information is maintained.

**FORCE MAJEURE**

It shall not be a breach or default under this franchise if either party fails to perform its obligations hereunder due to Force Majeure. Force Majeure shall include, but not be limited to, the following: 1) physical events such as acts of God, landslides, lightning, earthquakes, fires, freezing, storms, floods, washouts, explosions, breakage or accident or necessity of repairs to

machinery, equipment or distribution or transmission lines; 2) acts of others such as strikes, work-force stoppages, riots, sabotage, insurrections or wars; 3) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, executive order, or regulation promulgated by a governmental authority having jurisdiction; and any other causes, whether of the kind herein enumerated or otherwise not reasonably within the control of the affected party to prevent or overcome. Each party shall make reasonable efforts to avoid Force Majeure and to resolve such event as promptly as reasonably possible once it occurs in order to resume performance; provided, however, that this provision shall not obligate a party to settle any labor strike.

#### **HOLD HARMLESS**

Grantee, during the term of this Ordinance, agrees to save harmless Grantor from and against all claims, demands, losses and expenses arising directly out of the negligence of Grantee, its employees or agents, in the constructing, operating, and maintaining of distribution and transmission facilities or appliances of Grantee; provided, however, that Grantee need not save harmless Grantor from claims, demands, losses and expenses arising out of the negligence of Grantor, its employees or agents.

#### **SEVERABILITY**

If any clause, sentence or section of this Ordinance is deemed invalid by any judicial, regulatory or legislative body having proper jurisdiction, the remaining provisions shall not be affected.

#### **NON WAIVER**

Any waiver of any obligation or default under this franchise shall not be construed as a waiver of any future defaults, whether of like or different character.

#### **REPEAL CONFLICTING ORDINANCES**

This ordinance, when accepted by Grantee as provided below, shall constitute the entire agreement between the Grantor and the Grantee relating to this franchise and the same shall supersede all prior ordinances pertaining to this franchise agreement, and any terms and conditions of such prior ordinances or parts of ordinances in conflict herewith are hereby repealed. Ordinance No 183 of the City of Stewartville, Minnesota is hereby repealed as of the effective date hereof.

#### **EFFECT AND INTERPRETATION OF ORDINANCE**

The captions which precede each section of this ordinance are for convenience in reference only and shall not be taken into consideration in the interpretation of any of the provisions of this ordinance.

#### **EFFECTIVE DATE AND ACCEPTANCE**

This Ordinance shall become effective and be a binding contract between the Grantor and Grantee, upon its final passage and approval by Grantor, in accordance with applicable laws and regulations, and upon acceptance by Grantee by written instrument within sixty (60) days of passage by the governing body, and filed with the City Clerk of the City of Stewartville Minnesota. The City Clerk shall sign and affix the community seal to acknowledge receipt of such acceptance,

and return one copy to Grantee. If Grantee does not, within sixty (60) days following passage of this Ordinance express in writing its objections to any terms or provisions contained therein, or reject this ordinance in its entirety, Grantee shall be deemed to have accepted this ordinance and all of its terms and conditions.

Passed and approved by the City Council of the City of Stewartville, on this 5th day of June, 2003.

Chris Gray  
Mayor

ATTEST:

Tony Chladek  
City Administrator

ORDINANCE NO. 2003-12

AN ORDINANCE GRANTING A FRANCHISE TO CC VIII OPERATING, LLC, D/B/A CHARTER COMMUNICATIONS, TO CONSTRUCT, OPERATE, AND MAINTAIN A CABLE COMMUNICATIONS SYSTEM IN THE CITY OF STEWARTVILLE, MINNESOTA SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM AND THE PUBLIC RIGHTS-OF-WAY; AND PRESCRIBING PENALTIES FOR THE VIOLATION OF THE PROVISIONS HEREIN;

The City Council of the City of Stewartville, Minnesota ordains:

STATEMENT OF INTENT AND PURPOSE

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 City and the public generally. Further, City may achieve better utilization and improvement of public services and enhanced economic development with the development and operation of a Cable System.

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

**SECTION I**  
**Definition of Terms**

**1.1 Terms.** For the purpose of this Ordinance, the following terms, phrases, words and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number:

- a. “Affiliate” means an entity which owns or controls, is owned or controlled by, or is under common ownership with Grantee.
- b. “Basic Cable Service” is the tier of service regularly provided to all Subscribers that includes the retransmission of local broadcast television signals.
- c. “Cable Act” means the Cable Communications Policy Act of 1984, as amended.
- d. “Cable Service” means (i) the one-way transmission to Subscribers of Video Programming or other programming service, and (ii) Subscriber interaction, if any, which is required for the selection of such Video Programming or any other lawful communication service.



- e. “Cable System” means a facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment or other communications equipment that is designed to provide Cable Service and other service to Subscribers.
- f. “Capital Grant” means 1) any and all payments made to acquire or improve property where the property or improvement has a useful life extending beyond the current year; 2) any and all funds expended for additions or improvements to plant and equipment that is in any way used for PEG programming; 3) lease or rental payments for PEG access facilities.
- g. “City” means the City of Stewartville, a municipal corporation of the State of Minnesota, as it now exists and as its borders may from time to time be changed.
- h. “Class IV Cable Communications Channel” means a signaling path provided by a cable communications system to transmit signals of any type from a Subscriber terminal to another point in the communications system.
- i. “FCC” means Federal Communications Commission, or successor governmental entity thereto.
- j. “Franchise” shall mean the initial authorization, or renewal thereof, issued by the Franchising Authority, whether such authorization is designated as a Franchise, permit, license, resolution, contract, certificate or otherwise, which authorizes construction and operation of the Cable System for the purpose of offering Cable Service or other service to Subscribers.
- k. “Franchising Authority” means the City of Stewartville, or the lawful successor, transferee, or assignee thereof.
- l. “Grantee” means CC VII Operating LLC, d/b/a Charter Communications, or the lawful successor, transferee, or assignee thereof, as franchisee.
- m. “Gross Revenues” means the monthly Cable Service revenues received by Grantee from Subscribers of the Cable System in the Service Area; provided, however, that such phrase shall not include: (i) revenues received from national advertising carried on Cable System; (ii) any taxes on Cable Service which are imposed directly or indirectly on any Subscriber thereof by any governmental unit or agency, and which are collected by the Grantee on behalf of such governmental unit or agency.
- n. “Person” means’ an individual, partnership, association, joint stock company, trust, corporation or governmental entity.

- o. “Public Way” shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Franchising Authority in the Service Area which shall entitle the Franchising Authority and the Grantee to the use thereof for the purpose of installing, operating, repairing and maintaining the Cable System. Public Way shall also mean any easement now or hereafter held by the Franchising Authority within the Service Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the Franchising Authority and the Grantee to the use thereof for the purpose of installing or transmitting Grantee’s Cable Service or other service over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, compliances, attachments and other property as may be ordinarily necessary and pertinent to the Cable System.
- p. “Service Area” means the present municipal boundaries of the Franchising Authority, and shall include any additions thereto by annexation or other legal means.
- q. “Service Tier” means a category of Cable Service or other services provided by Grantee and for which a separate charge is made by Grantee.
- r. “Subscriber” means a Person or user of the Cable System who lawfully receives Cable Services or other service therefrom with Grantee’s express permission.
- s. “Video Programming” means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

**SECTION II**  
**Grant of Franchise**

- 2.1** In the review of the request for renewal by Grantee and negotiations related thereto, the City Council makes the following findings:
- 1. 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 operating and maintaining the Cable System were considered and found adequate and feasible;
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.

**2.2 Grant.** The Franchising Authority hereby grants to Grantee a non-exclusive Franchise which authorizes the Grantee to construct and operate a Cable System and offer Cable Service and other services in, along, among, upon, across, above, over, under or in any manner connected with Public Ways within the Service Area and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain or retain in, on, over, under, upon, across or along any Public Way and all extensions thereof and additions. Thereto, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments and other related property or equipment as may be necessary or appurtenant to the Cable System.

**2.3 Term.** The Franchise granted pursuant to this Ordinance shall be for a term of ten (10) years from the effective date of the Franchise as set forth in Section 2.4, unless otherwise lawfully terminated in accordance with the terms of this Ordinance.

**2.4 Acceptance: Effective Date.** Grantee shall accept the Franchise granted pursuant hereto by signing this Ordinance and filing same with the Franchise Authority Clerk or other appropriate official or agency of the Franchising Authority within sixty (60) days after the passage and final adoption of this Ordinance. Subject to the acceptance by Grantee, the effective date of this Ordinance shall be the sixtieth day after its passage and final adoption.

**2.5 Favored Nations.** In the event the Franchising Authority enters into a Franchise, permit, license, authorization or other agreement of any kind with any other Person or entity other than the Grantee to enter into the Franchising Authority's Right of Way for the purpose of constructing or operating a Cable System or providing Cable Service to any part of the Service Area, the material provisions thereof shall be reasonably comparable to those contained herein, in order that one operator not be granted an unfair competitive advantage over another and to provide all parties equal protection under the law, and in accordance with Minnesota Statute 238.08.

**2.6 Compliance with Laws and Regulations.** The provisions of this Franchise shall be subject to applicable federal, state and local law. This Franchise complies with the Franchise standards contained in Minnesota Statutes Chapter 238; provided, however, if any provisions of Minnesota Statutes 238 conflict with the Cable Communications Act of 1984, as amended, ("Cable Act") or other applicable federal law or rulings, the provisions of the Cable Act or such other federal law or ruling shall have precedence. Grantee and the Franchising Authority shall conform to all state laws, rules and regulations regarding cable communications not later than one (1) year after they become effective, unless otherwise stated, and shall further conform to all federal laws

and regulations regarding cable as they become effective. If however, a shorter compliance time is provided for, or required by, such laws, rules and regulations, then, in such case, such shorter period shall control.

### **SECTION III** **Standards of Service**

**3.1 Construction Standards.** Grantee shall not commence construction of a cable communications system, or the maintenance or repair of a cable communications system which would open or disturb the surface of any street, sidewalk, driveway or public place without first obtaining a permit from and paying the required fees to the proper municipal authority pursuant to the terms of any existing or subsequently amended right of way ordinance. If Grantee fails to meet the conditions of the permit, including the payment of required fees, the Franchising Authority shall have the right to put the street or public place back into the condition which existed immediately prior to use by the Grantee at the reasonable expense of Grantee. Such permit shall not be unreasonably withheld.

All wires, conduits, cable and other property and facilities of the Grantee shall be so located, constructed, installed and maintained so as not to endanger or unnecessarily interfere with the usual and customary trade, traffic and travel upon any of the Franchising Authority's Public Ways. Grantee shall maintain the system in good repair, and the same shall be subject to the inspection of the Franchising Authority, or its representatives pursuant to the procedures set forth in Section V, 5.1.

**3.2 Conditions of Street Occupancy.** All transmission and distribution structures, poles, other lines and equipment installed or erected by the Grantee pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of Public Ways and with the rights and reasonable convenience of property owners who own property that adjoins any of said Public Ways.

**3.3 Restoration of Public Ways.** If during the course of Grantee's construction, operation or maintenance of the Cable System there occurs a disturbance of any Public Way by Grantee, it shall, at its expense, replace and restore such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to such disturbance. In the event the Grantee does not do so within ten (10) days prior written notice to the Grantee, the City may restore the Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to such disturbance, with all expenses to be paid by the Grantee.

**3.4 Relocation at Request of Franchising Authority.** Upon its receipt of reasonable advance written notice, not to be less than five (5) business days, the Grantee shall, at its own expense, protect, support, temporarily disconnect, relocate in the Public Way, or remove from the Public Way, any property of the Grantee when lawfully required by Franchising Authority by reason of traffic conditions, public safety, street abandonment, freeway and street construction,

change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of structures or improvements by the Franchising Authority. If public funds are available to any company using such street, easement, or right-of-way for the purpose of defraying the cost of any of the foregoing, such funds shall also be made available to the Grantee.

**3.5 Relocation at Request of Third Party.** The Grantee shall, on the request of any Person holding a building moving permit issued by the Franchising Authority, temporarily raise or lower its wires to permit the moving of such building, provided: (a) the expense of such temporary raising or lowering of wires is paid by said Person, including, if required by the Grantee, making such payment in advance; and (b) the Grantee is given not less than ten (10) business days advance written notice to arrange for such temporary wire changes.

**3.6 Trimming of Trees and Shrubbery.** The Grantee shall have the authority to trim trees or other natural growth overhanging any of its Cable System in the Service Area so as to prevent branches from coming in contact with the Grantee's wires, cables or other equipment. Grantee shall be permitted to charge Persons who own, or are responsible for, such trees or natural growth for the cost of such trimming, provided that similar charges are assessed by and paid to the utilities or the Franchising Authority for tree trimming. The Grantee shall reasonably compensate the Franchising Authority or property owner for any damages caused by such trimming, or shall, in its sole discretion and at its own cost and expense, reasonably replace all trees or shrubs damaged as a result of any construction of the Cable System undertaken by Grantee. Such replacement shall satisfy any and all obligations Grantee may have to the Franchising Authority or property owner pursuant to the terms of this section.

**3.7 Use of Grantee's Equipment by Franchising Authority.** Subject to any applicable state or federal regulations or tariffs, the Franchising Authority shall have the right to make additional use, for any public purpose, of any poles or conduits controlled or maintained exclusively by or for the Grantee in any Public Way; provided that (a) such use by the Franchising Authority does not interfere with a current or future use by the Grantee; (b) the Franchising Authority holds the Grantee harmless against and from all claims, demands, costs, or liabilities of every kind and nature whatsoever arising out of such use of said poles or conduits, including but not limited to, reasonable attorney's fees and costs; and (c) the Franchising Authority may be required either to pay a reasonable rental fee or otherwise reasonably compensate Grantee for the use of such poles, conduits or equipment; provided, however, that Grantee agrees that such compensation or charge shall not exceed those paid by it to public utilities pursuant to the applicable pole attachment agreement or other authorization relating to the Service Area.

**3.8 Safety Requirements.** Construction, installation and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. All such work shall be performed in accordance with applicable FCC or other federal, state and local regulations. The Cable System shall not unreasonably endanger or interfere with the safety of Persons or property in the Service Area.

### **3.9 Undergrounding Facilities.**

(a) New cable communications facilities or a permanent extension of cable communications facilities must be installed and maintained underground when supplied to:

(1) A new installation of buildings or other habitable structures; or

(2) A new subdivision of land; or

(3) A new development or industrial park containing new residential, commercial or industrial buildings.

(b) A permanent replacement, relocation or reconstruction of a cable communications facility of more than 300 feet must be located, and maintained underground, with due regard for seasonal working conditions. For purposes of this section, reconstruction means any substantial repair of or any improvement to existing cable communications facilities, or by the Franchising Authority in connection with (1) the present or future use by the Franchising authority or other local government unit of the right of way for a public project; or (2) the public health or safety; or (3) the safety and convenience of travel over the right of way.

(c) The requirement that cable communications facilities must be installed and maintained underground shall be waived if public utilities provided by telephone communications facilities and electrical energy facilities are located above ground.

**3.10 Required Extensions of Service.** The Cable System as constructed as of the date of the passage and final adoption of this Ordinance substantially complies with the material provisions hereof. Grantee is hereby authorized to extend the Cable System as necessary, as desirable, or as required pursuant to the terms hereof within the Service Area. Whenever Grantee shall receive a request for service from at least fifteen (15) Subscribers within 1,320 cable-bearing strand feet (one-quarter cable mile) of, its trunk or distribution cable, it shall extend its Cable System to such Subscribers at no cost to said Subscribers for system extension, other than the usual connection fees for all Subscribers; provided that such extension is technically feasible, and if it will not adversely affect the operation, financial condition or market development of the Cable System, or as provided for under Section 3.11 of this Ordinance.

**3.11 Subscriber Charges for Extensions of Service.** No Subscriber shall be refused service arbitrarily. However, for unusual circumstances, such as a Subscriber's request to locate his cable drop underground, existence of more than one hundred fifty (150) feet of distance from distribution cable to connection of service to Subscribers, or a density of less than fifteen (15) Subscribers per 1,320 cable-bearing strand feet of trunk or distribution cable, Cable Service or other service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by Grantee and Subscribers in the area in which Cable Service may be expanded, Grantee will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of potential Subscribers per 1,320 cable-bearing strand feet of its trunk or distribution

cable, and whose denominator equals fifteen (15) Subscribers. Potential Subscribers will bear the remainder of the construction and other costs on a pro rata basis. Grantee may require that the payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance.

**3.12 Service to Public Buildings.** The Grantee shall provide without charge, one (1) outlet of Basic Service to the Franchising Authority's office building(s) , fire station(s) , police station(s) , civic center(s) , library(s), City owned nursing home(s) and public school building(s) that are passed by its Cable System. The outlets of Basic Cable Service shall not be used to distribute or sell Cable Services in or throughout such buildings; nor shall such outlets be located in common or public areas open to the public. Users of such outlets shall hold Grantee harmless from any and all liability or claims arising out of their use of such outlets, including but not limited to, those arising from copyright liability. Notwithstanding anything to the contrary set forth in this section, the Grantee shall not be required to provide an outlet to such buildings where the drop line from the feeder cable to said buildings or premises exceeds one hundred fifty (150) cable feet, unless it is technically feasible and so long as it will not adversely affect the operation, financial condition or market development of the Cable System to do so, or unless the appropriate governmental' entity agrees to pay the incremental cost of such drop line in excess of 150 cable feet. In the event that additional outlets of Basic Cable Service are provided to such buildings, the building owner shall pay the usual installation fees associated therewith, including, but not limited to, labor and materials. Upon request of Grantee, the building owner may also be required to pay the service fees associated with the provision of Basic Cable Service and the additional outlets relating thereto.

**3.13 Emergency Override.** In the case of any emergency or disaster, the Grantee shall, upon request of the Franchising Authority, make available its facilities for the Franchising Authority to provide emergency information and instructions during the emergency or disaster period. The Franchising Authority shall hold the Grantee, its agents, employees, officers and assigns hereunder, harmless from any claims arising out of the emergency use of its facilities by the Franchising Authority

**3.14 Channel Capacity.** The Grantee shall provide a Cable System with the capacity of delivering fifty-four (54) video programmed channels.

**3.15 Public Educational and Government Access Channel.**

The Grantee shall provide to each of its Subscribers who receive Basic Cable services offered on the Cable System, reception on at least one specially designated access channel available for use by the general public on a first-come, first-served, nondiscriminatory basis. During those hours that the specially designated access channel is not being used by the general public, local educational authorities, or local government, the Grantee may use this specially designated access channel.

Whenever such specially designated access channel is in use during eighty percent (80%) of the weekdays, Monday through Friday, for eighty percent (80%) of the time during any consecutive three- hour period of six (6) consecutive weeks, Grantee shall provide upon demand and within a six-month period, an additional channel or channels for public, educational, or governmental access, provided such channel or channels do not require the Cable System to install converters.

Upon need being shown, Grantee shall provide for use by the public at least the minimal equipment necessary to perform good quality playback of pre-recorded programming and to enable recording of programs at remote locations with the use of portable battery-operated equipment. For the purpose of this provision, need is established when at least ten percent (10%) of the Subscribers of the Cable System have signed a petition; provided, however, such petition must contain the signatures of no fewer than one hundred (100) Subscribers and no more than three hundred fifty (350) Subscribers.

The Grantee shall establish rules for the administration of the specially designated access channel.

### **3.16 Public educational and Government Access Support.**

a. Upon acceptance of this Franchise, Grantee shall provide the City \$10,000.00 (Ten Thousand dollars) Capital Grant to be used exclusively to purchase PEG Access equipment such as, but not limited to, character generators, modulators, cameras, tape decks, etc.

b. In the event there is Competition in the City during the term of this Franchise, the City shall ensure that the obligations to support PEG Access Facilities are imposed equally, in a non-discriminatory fashion.

c. In addition to the requirements of this Section, the City may require Grantee to collect an Access Fee to purchase additional PEG Access equipment. The PEG Access Fee may not exceed fifty-cents (\$.50) per Subscriber per month. Payments must be made annually. All amounts paid shall be subject to audit and recomputation and City's acceptance shall not be an accord that the amount paid is correct. The City may adopt a Resolution modifying the Access Fee amount no more than once every twenty-four (24) months. The City must provide notice of any modification to Grantee on or before November 1st, to be effective on January 1st of the following year. Grantee may itemize any Access Fee on Subscriber's bills. Payment by Grantee must be separate from and in addition to any franchise fee. In the event the City exercises the PEG Access Fee option, the Grantee may retain up to 50% (fifty percent) of the Access Fee to be used solely for the reimbursement of Grantee's expenditures to the City for PEG support as required in this Franchise Section. Upon full collection, Grantee shall remit full collected amount to the City under terms and conditions set forth in this Franchise.

**3.17 Two-Way System.** Grantee shall provide a cable communications system having the technical capacity for non-voice return communications.



**SECTION IV**  
**Regulation by Franchising Authority**

**4.1 Franchise Fee.**

a. During the term of the Franchise, Grantee shall pay quarterly to City 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. The Grantee shall have ninety (90) days upon receipt of written notice from the City to effectuate any changes in the Franchise Fee.

b. Any payments due under this provision shall be payable quarterly. The payment shall be made within sixty (60) days of the end of each of Grantee's fiscal quarters together with a report 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.

d. The parties acknowledge that at the present time, the City may not legally impose a Franchise Fee on the computer cable modem service provided to customers by Grantee. The parties specifically agree that if there is a change in the law during the term of this Franchise and it becomes legal for the City to charge a Franchise Fee on the computer cable modem service of Grantee, then and in that event the Gross Revenues derived from cable modem service shall be added to the Grantee's Gross Revenues as defined in this Ordinance and the 5% Franchise Fee set forth in paragraph a. above shall apply to Grantee's Gross Revenues derived from computer cable modem service as well as to Grantee's Gross Revenues as defined this Ordinance.

**4.2 Not Franchise Fees.**

a. Grantee acknowledges that the Franchise Fees payable by Grantee to the Franchising Authority pursuant to Section 3.2 hereof shall take precedence over all other payments, contributions, Services, equipment, facilities, support, resources or other activities to be provided or performed by the Grantee pursuant to this agreement and/or the Ordinance and that the Franchise Fees provided for in Section 3.2 of this Agreement shall not be deemed to be in the nature of a tax, and shall be in addition to any and all taxes of general applicability and other fees and charges which the Grantee shall be required to pay to the Franchising Authority and/or to any other Governmental Authority, all of which shall be separate and distinct obligations of Grantee.

b. Grantee shall not apply or seek to make any claim that all or any part of the Franchise Fees or other payments or contributions to be made by Grantee to Franchising Authority pursuant to this Agreement and/or the Ordinance shall be deducted from or credited or offset against any taxes, fees or assessments or general applicability levied or

imposed by the Franchising Authority or any other Governmental Authority, including any such tax, fee or assessment imposed on both utilities and cable operators or their services.

c. Grantee shall not apply or seek all or any part of any taxes, fees or assessments of general applicability levied or imposed by the Franchising Authority any other Governmental Authority as a deduction or other credit from or against any of this Franchise Ordinance by Grantee to Franchising Authority, each of which shall be deemed to be separate and distinct obligations of the Grantee.

**4.3 Rates and Charges.** The Franchising Authority may not regulate the rates for the provision of Cable Service and other services, including, but not limited to, ancillary charges relating thereto, except as expressly provided herein and. except as authorized pursuant to federal and state law including, but not limited to, the Cable Act and FCC Rules and Regulations relating thereto. From time to time, and at any time, Grantee has the right to modify its rates and charges including, but not limited to, the implementation of additional charges and rates; provided, however, that Grantee shall give notice to the Franchising Authority of any such modifications or additional charges thirty (30) days prior to the effective date thereof.

A schedule of the current Subscriber charges, as well as the form of residential Subscriber contract, specifying the current length and term of Subscriber contracts, shall be kept on file, and available for public inspection during normal office hours, at the local office of Grantee.

**4.4 Renewal of Franchise.** The Franchising Authority and the Grantee agree that any proceedings undertaken by the Franchising Authority that relate to the renewal of the Grantee's Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, as amended, unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of federal or state law.

In addition to the procedures set forth in said Section 626(a), the Franchising Authority agrees to notify Grantee of its preliminary assessments regarding the identity of future cable-related community needs and interests, as well as the past performance of Grantee under the then current Franchise term. The Franchising Authority further agrees that such a preliminary assessment shall be provided to the Grantee prior to the time that the four (4) month period referred to in Subsection (c) of Section 626 is considered to begin. Notwithstanding anything to the contrary set forth in this section, the Grantee and Franchising Authority agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment, the Franchising Authority and Grantee may agree to undertake and finalize negotiations regarding renewal of the then current Franchise and the Franchising Authority may grant a renewal thereof. The Grantee and the Franchising Authority consider the terms set forth in this section to be consistent with the express provisions of Section 626 of the Cable Act, as amended.

**4.5 Abandonment.** The Grantee shall not abandon any portion of its Cable System without giving three (3) months prior written notice to the Franchising Authority. Further, Grantee may not abandon any portion of the Cable System without compensating the Franchising Authority for reasonable damages resulting from the abandonment.

**4.6 Conditions of Sale.** Except to the extent expressly required by federal or state law, if a renewal or extension of Grantee's Franchise is denied or the Franchise is lawfully terminated, and the Franchising Authority either lawfully acquires ownership of the Cable System or by its actions lawfully effects a transfer of ownership of the Cable System to another party, any such acquisition or transfer shall be at a fair market value, determined on the basis of the Cable System valued as a going concern.

If the Franchise or Cable System is offered for sale, the Franchising Authority shall also have the right to purchase the system at its fair market value as a going concern.

Grantee and Franchising Authority agree that in the case of a lawful revocation of the Franchise, at Grantee's request, which shall be made in its sole discretion, Grantee shall be given a reasonable opportunity to effectuate a transfer of its Cable System to a qualified third party. The Franchising Authority further agrees that during such a period of time, it shall authorize the Grantee to continue to operate pursuant to the terms of its prior Franchise; however, in no event shall such authorization exceed a period of time greater than six (6) months from the effective date of such revocation. If, at the end of that time, Grantee is unsuccessful in procuring a qualified transferee or assignee of its Cable System which is reasonably acceptable to the Franchising Authority, Grantee and Franchising Authority may avail themselves of any rights they may have pursuant to federal or state law; it being further agreed that Grantee's continued operation of its

Cable System during the six (6) month period shall not be deemed to be a waiver, nor an extinguishment of, any rights of either the Franchising Authority or the Grantee. Notwithstanding anything to the contrary set forth in this section, neither Franchising Authority nor Grantee shall be required to violate federal or state law.

**4.7 Removal of Property.** Upon termination or forfeiture of this Franchise, Grantee shall, if the Franchising Authority so requests, remove all of its cables, wires and appliances from the streets, alleys and other public places, with the exception of those portions of said cables, wires and appliances as are then being utilized and operated by Grantee under any other lawful and effective governmental permit or license. If the same are not so removed, the Franchising Authority may cause the same to be removed and recover the reasonable costs thereof from Grantee.

**4.8 Transfer of Franchise.** Neither Grantee's right, title or interest in this Franchise, nor the Cable System for which it is granted, shall be sold transferred, assigned, or, otherwise encumbered, other than to an Affiliate, except with the approval of the Franchising Authority, which approval shall not be unreasonably withheld. Such sale or transfer or creation of a new controlling interest shall be completed pursuant to applicable federal and state law. No such

consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title or interest of Grantee in the Franchise or Cable System in order to secure indebtedness.

**4.9 Continuing Administration Responsibility.** The office of the City Administrator shall be responsible for the continuing administration of this Franchise.

## **SECTION V** **Compliance and Monitoring**

**5.1 Testing for Compliance.** The Franchising Authority may perform technical tests of the Cable System during reasonable times and in a manner which does not unreasonably interfere with the normal business operations of the Grantee or the Cable System in order to determine whether or not the Grantee is in compliance with the terms hereof and applicable state or federal laws. Except in emergency circumstances, such tests may be undertaken only after giving Grantee reasonable notice thereof, not to be less than two (2) business days, and providing a representative of Grantee an opportunity to be present during such tests. In the event that such testing demonstrates that the Grantee has substantially failed to comply with a material requirement hereof, the reasonable costs of such tests shall be borne by the Grantee. In the event that such testing demonstrates that Grantee has substantially complied with such material provisions hereof, the cost of such testing shall be borne by the Franchising Authority. Except in emergency circumstances, the Franchising Authority agrees that such testing shall be undertaken no more than two (2) times a year in the aggregate, and that the results thereof shall be made available to the Grantee upon Grantee's request.

**5.2 Technical Standards.** The technical standards promulgated by the FCC relating to cable communications systems contained in Subpart K of Part 76 of FCC rules and regulations are herein incorporated by reference, as the same now provides, and may from time to time be hereafter amended. The results of such tests required by the FCC must be filed with the Franchising Authority within ten (10) days of the conduct of the tests.

**5.3 Books and Records.** The Grantee agrees that the Franchising Authority, upon reasonable notice, may review such of its books and records, during normal business hours and on a nondisruptive basis, as is reasonably necessary to monitor compliance with the terms hereof. Such records shall include, but shall not be limited to, accounting and financial records that may be reasonably necessary to monitor compliance with the material provisions of the Franchise, location maps and any public records required to be kept by the Grantee pursuant to the rules and regulations of the FCC. The Grantee shall file with the Franchising Authority annually reports of gross Subscriber revenues and such other information as the Franchising Authority reasonably deems necessary for enforcement of the Franchise. Notwithstanding anything to the contrary set forth herein, Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. The Franchising Authority agrees to treat any information disclosed by the Grantee to it as confidential and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof.

**SECTION VI**  
**Insurance, Indemnification and Bonds or Other Surety**

**6.1 Insurance Requirements.**

(a) Upon the Effective Date, the Grantee shall, at it's sole expense, take out and maintain during the term of this Agreement commercial general liability insurance with a company licensed to do business in the State of Minnesota that shall protect the Grantee, the Franchise Authority and its officials, officers, directors, and employees from claims which may arise from operations under this Agreement, whether such operations be by the Grantee, its officials, officers, directors, employees and agents or any subcontractors of Grantee. This liability insurance shall include, but not be limited to, protection against claims arising form bodily and personal injury and damage to property, resulting from Grantee's vehicles, products and operations. The amount of insurance for single limit coverage applying to bodily and personal injury and property damage shall not be less than One and One-Half Million Dollars (\$1,500,000.00) The following endorsements shall be part of Grantee's liability policy:

1. The policy shall provide coverage on an "occurrence" basis.
2. The policy shall cover personal injury as well as bodily injury.
3. 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.
4. Broad form property damage liability shall not be afforded. The Franchising Authority 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 maintained by the Franchising Authority will be called upon to contribute to a loss under this coverage.
6. Standard form of cross liability shall be afforded.
7. An endorsement stating that the policy shall not be canceled without thirty (30) days notice of such cancellation given to the Franchising Authority.
8. An endorsement stating that the policy shall not be canceled without thirty (30) days notice of such cancellation given to the Franchising Authority.

(b) Franchising Authority reserves the right to adjust the insurance limit coverage requirements by this Agreement no more often than once every five (5) years. Any such adjustment by the Franchising Authority will be no greater than the increase in the State of Minnesota Consumer Price Index (all consumers) for such five (5) year period.

(c) Grantee shall submit for approval to Franchising Authority documentation of the required insurance, including a certificate of insurance signed by an authorized representative of the insurance company named, as evidence of compliance with all requirements of this Agreement.

**6.2 Indemnification.** The Grantee agrees to indemnify, save and hold harmless, and defend the Franchising Authority, its officers, boards and employees, from and against any liability for damages and for any liability or claims resulting from property damage or bodily injury (including accidental death), which arise out of the Grantee's construction, operation or maintenance of its Cable System, including, but not limited to, reasonable attorney's fees and costs; provided, however, that nothing contained in this Franchise Ordinance shall relieve any Person from liability arising Out of the failure to exercise reasonable care to avoid injury to the Grantee's facilities while performing any work connected with grading, regrading or changing the line of any street or public place, or with the construction or reconstruction of any sewer of water system. The indemnification requirements of this section specifically include the safety requirements as set forth in Section 3.8.

**6.3 Surety Guarantee.** At all times hereunder until the Grantee has liquidated all of its obligations under the Franchise to the Franchising Authority, the Grantee shall furnish a bond or other surety in the amount of \$10,000, conditioned upon the faithful performance by the Grantee of its material obligations under this Franchise. The Franchising Authority may, from year to year and in its sole discretion, reduce the amount of any such bond or other surety.

## **SECTION VII** **Enforcement and Termination of Franchise**

**7.1 Notice of Violation.** In the event that the Franchising Authority believes that the Grantee has not complied with the terms of the Franchise, it shall notify Grantee in writing of the exact nature of the alleged noncompliance.

**7.2 Grantee's Right to Cure or Respond.** Grantee shall have thirty (30) days from receipt of the notice described in Section 7.1: (a) to respond to the Franchising Authority contesting the assertion of noncompliance or; (b) to cure such default or; (c) in the event that, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the Franchising Authority of the steps being taken and the projected date that they will be completed.

**7.3 Public Hearing.** In the event that Grantee fails to respond to the notice described in Section 7.1 pursuant to the procedures set forth in Section 7.2, or in the event that the alleged default is not remedied within sixty (60) days after the Grantee is notified of the alleged default pursuant to Section 7.1., the Franchising Authority shall schedule a public meeting to investigate the default. Such public meeting shall be held at the next regularly scheduled meeting of the Franchising Authority which is scheduled at a time which is not less than five (5) business days therefrom. The Franchising Authority shall notify the Grantee of the time and place of such meeting and provide the Grantee with an opportunity to be heard.

**7.4 Enforcement.** Subject to applicable federal and state law, in the event the Franchising Authority, after such meeting, determines that Grantee is in default of any provision of the Franchise, the Franchising Authority may:

- a. Foreclose on all or any part of any security provided under this Franchise, if any, including without limitation, any bonds or other surety; provided, however, the foreclosure shall only be in such a manner and in such amount as the Franchising Authority reasonably determines is necessary to remedy the default;
- b. Commence an action at law for monetary damages or seek other equitable relief;
- c. In the case of a substantial default of a material provision of the Franchise, any attempt by Grantee to evade the provisions of the Franchise, or Grantee practices fraud or deceit upon the Franchising Authority, declare the Franchise Agreement, and the rights and privileges thereof, to be revoked; or;
- d. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages.

Any such determination by the Franchising Authority shall be subject to a de novo review by a court of competent jurisdiction.

The Grantee shall not be relieved of any of its obligations to comply promptly with any provision of the Franchise by reason of any failure of the Franchising Authority to enforce prompt compliance.

**7.5 Acts of God.** The Grantee shall not be held in default or noncompliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating thereto, where such noncompliance or alleged defaults are caused by strikes, acts of God, power outages, or other events reasonably beyond its ability to control.

**SECTION VIII**  
**Unauthorized Reception**

**8.1 Misdemeanor.** In addition to those criminal and civil remedies provided by state and federal law, it shall be a misdemeanor for any Person, firm or corporation to create or make use of any unauthorized connection, whether physically, electrically, acoustically, inductively, or otherwise, with any part of the Cable System without the express consent of the Grantee. Further, without the express consent of Grantee, it shall be a misdemeanor for any Person to tamper with, remove, or injure any property, equipment, or part of the Cable System or any means of receiving Cable Service or other services provided thereto.

**SECTION IX**  
**Consumer Protection Provisions**

**9.1 Subscriber Privacy.** No signal of a Class IV Cable Communications Channel may be transmitted from a Subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the Subscriber. Such permission is only valid for one (1) year and must be renewed on an annual basis. Written permission from the Subscriber shall not be required for the systems conducting system-wide or individually addressed electronic sweeps for the purpose of verifying system integrity or monitoring for the purpose of billing.

**9.2 Subscriber Complaints and Repairs.** The Grantee shall maintain a toll free or collect telephone number for the reception of complaints. All complaints regarding quality of service, equipment malfunction, billing disputes, or any other matters relative to the cable communications system shall be responded to by the Grantee whenever possible within twenty-four (24) hours of notice to the Grantee. The Grantee shall maintain a repair service capable of responding to Subscriber complaints or requests for repairs within twenty-four (24) hours after receipt of said complaints or requests. The Grantee shall resolve the complaint, if reasonably possible, within five (5) working days. Costs for making such repairs shall be borne by the Grantee unless otherwise provided in the Subscriber's contract, or unless said repairs are necessitated by the negligence or deliberate acts of the Subscriber. In such cases, the Subscriber shall bear the costs. Installation charges shall be borne by the Subscriber. The Subscriber may also file his or her complaint with the office of the City Administrator who shall have primary responsibility for the continuing administration of this Franchise and the procedures for resolving complaints.

**SECTION X**  
**Miscellaneous Provisions**

**10.1 Preemption.** If the FCC, or any other federal or state body or agency shall now or hereafter exercise any paramount jurisdiction over the subject matter of the Franchise, then to the extent such jurisdiction shall preempt and supersede or preclude the exercise of the like



jurisdiction by the Franchising Authority, the jurisdiction of the Franchising Authority shall cease and no longer exist.

**10.2 Amendments of Federal and State Laws.** In the event federal and state laws are enacted in the future which permit additional regulatory authority by Franchising Authorities, Grantee and Franchising Authority agree to negotiate in good faith and consider modification of this Franchise to incorporate such changes.

**10.3 Actions of Franchising Authority.** In any action by the Franchising Authority or representative thereof mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where, approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

**10.4 Notice.** Unless expressly otherwise agreed between the parties, every notice or response to be served upon the Franchising Authority or Grantee shall be in writing, and shall be deemed to have been duly given to the required party five (5) business days after having been posted in a properly sealed and correctly addressed envelope by certified or registered mail, postage prepaid, at a post office or branch thereof regularly maintained by the U.S. Postal Service.

The notices or responses to the Franchising Authority shall be addressed as follow:

City of Stewartville  
Attn: City Administrator  
East 1st Street  
Stewartville, Minnesota 55976

The notices or responses to the Grantee shall be addressed as follows: .

Charter Communications  
Attn: General Manager  
1255 E. Circle Drive, NE  
Rochester, MN 55906

With a copy to:

Charter Communications  
Attn: Government Relations  
1265 John Q. Hammons Drive  
Madison, WI 53717

Franchising Authority and the Grantee may designate such other address or addresses from time to time by giving notice to the other.

**10.5 Descriptive Headings.** The captions to sections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.

**10.6 Severability.** If any section, sentence, paragraph, term or provision hereof is determined to be illegal, invalid or unconstitutional by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise or any renewal or renewals thereof.

Passed and adopted this 22nd day of, July 2003 subject to applicable federal, state and local law.

CITY OF STEWARTVILLE, MINNESOTA

Chris Gray, Mayor

Witness:

Tony Chladek  
City Administrator

Accepted this \_\_\_\_\_ day of, \_\_\_\_\_ 2003, subject to applicable federal, state and local law.

CC VII Operating LLC, d/b/a Charter Communications

Michael Haislip  
Sr. VP Operations  
Great Lakes Division

**ELECTRIC FRANCHISE ORDINANCE  
ORDINANCE NO. 2004-5  
CITY OF STEWARTVILLE, OLNSTED COUNTY, MINNESOTA**

**AN ORDINANCE GRANTING TO PEOPLE’S COOPERATIVE SERVICES, A MINNESOTA CORPORATION, ITS SUCCESSORS AND ASSIGNS, A NONEXCLUSIVE FRANCHISE TO CONSTRUCT, OPERATE, REPAIR AND MAINTAIN IN THE CITY OF STEWARTVILLE, MINNESOTA, AN ELECTRIC DISTRIBUTION SYSTEM AND TRANSMISSION LINES, INCLUDING NECESSARY POLES, LINES, FIXTURES AND APPURTENANCES, FOR THE FURNISHING OF ELECTRIC ENERGY TO THE CITY, ITS INHABITANTS, AND OTHERS, AND TO USE THE PUBLIC WAYS AND PUBLIC GROUNDS OF THE CITY FOR SUCH PURPOSES.**

**THE CITY COUNCIL OF THE CITY OF STEWARTVILLE, OLNSTED COUNTY, MINNESOTA, ORDAINS:**

**SECTION 1. DEFINITIONS.**

For purposes of this Ordinance, the following capitalized terms listed in alphabetical order shall have the following meanings:

**City.** The City of Stewartville, County of Olmsted, State of Minnesota.

**City Utility System.** Facilities used for providing public utility service owned or operated by City or agency thereof, including sewer, storm sewer, water service, street lighting and traffic signals, but excluding facilities for providing heating, lighting, or other forms of energy.

**Commission.** The Minnesota Public Utilities Commission, or any successor agency or agencies, including an agency of the federal government, which preempts all or part of the authority to regulate electric retail rates now vested in the Minnesota Public Utilities Commission.

**Company.** People’s Cooperative Services, a Minnesota Corporation, its successors and assigns including all successors or assignees that own or operate any part or parts of the Electric Facilities subject to this franchise.

**Electric Facilities.** Electric transmission and distribution towers, poles, lines, guys, anchors, conduits, fixtures, and necessary appurtenances owned or operated by Company for the purpose of providing electric energy for public or private use.

**Notice.** A writing served by any party or parties on any other party or parties. Notice to Company shall be mailed to 3935 Highway 14 East, Rochester, MN 55904. Notice to the City shall be mailed to 105 East 1st Street, Stewartville, MN 55976. Any party may change its respective address for the purpose of this Ordinance by written notice to the other parties.

**Public Way.** Any street, alley or public right-of-way within the City.

**Public Ground.** Land owned or otherwise controlled by the City for park, open space or similar public purpose, which is held for use in common by the public.

## **SECTION 2. ADOPTION OF FRANCHISE.**

**2.1 Grant of Franchise.** City hereby grants Company, for a period of 5 years from the date this Ordinance is passed and approved by the City, the right to transmit and furnish electric energy for light, heat and power for public and private use within and through the limits of the City as its boundaries now exist or as they may be extended in the future. For these purposes, Company may construct, operate, repair and maintain Electric Facilities in, on, over, under and across the Public Ways and Public Grounds, subject to the provisions of this Ordinance. Company may do all reasonable things necessary or customary to accomplish these purposes, subject however, to such reasonable regulations as may be imposed by the City pursuant to ordinance or permit requirements and to the further provisions of this franchise agreement.

**2.2 Effective Date; Written Acceptance.** This franchise shall be in force and effect from and after the passage of this Ordinance and publication as required by law and its acceptance by Company. If Company does not file a written acceptance with the City within 60 days after the date the City Council adopts this Ordinance, the City Council by resolution may revoke this franchise or seek its enforcement in a competent jurisdiction.

**2.3 Service, Rates and Area.** The service to be provided and the rates to be charged by Company for electric service in City are subject to the jurisdiction of the Commission. The area within the City in which Company may provide electric service is subject to the provisions of Minnesota Statutes, Section 216B.37-40.

**2.4 Publication Expense.** City shall pay the expense of publication of this Ordinance.

**2.5 Dispute Resolution.** If either party asserts that the other party is in default in the performance of any obligation hereunder, the complaining party shall notify the other party of the default and the desired remedy. The notification shall be written. Representatives of the parties must promptly meet and attempt in good faith to negotiate a resolution of the dispute. If the dispute is not resolved within thirty (30) days of the date of written Notice, the parties may jointly select a mediator to facilitate further discussion. The parties will equally share the fees and expenses of this mediator. If a mediator is not used or if the parties are unable to resolve the dispute within 30 days after first meeting with the selected mediator, either party may commence an action in District Court to interpret and enforce this franchise or for such other relief as may be permitted by law or equity.

**2.6 Continuation of Franchise.** If the City and the Company are unable to agree on the terms of a new franchise by the time this franchise expires, this franchise will remain in effect until a new franchise is agreed upon, or until 90 days after the City or the Company serves written

Notice to the other party of its intention to allow the franchise to expire. However, in no event shall this franchise continue for more than one year after expiration of the 5 year term set forth in Section 2.1.

### **SECTION 3. LOCATION, OTHER REGULATIONS.**

**3.1 Location of Facilities.** Electric Facilities shall be located, constructed, and maintained so as not to interfere with the safety and convenience of ordinary travel along and over Public Ways and so as not to disrupt or interfere with the normal operation of any City Utility System. Electric Facilities may be located on Public Grounds as determined by the City. Company's construction, reconstruction, operation, repair, maintenance, location and relocation of Electric Facilities shall be subject to other reasonable regulations of the City consistent with authority granted to the City to manage its Public Ways and Public Grounds under state law, to the extent not inconsistent with a specific term of this franchise agreement.

**3.2 Street Openings.** Company shall not open or disturb the surface of any Public Way or Public Ground for any purpose without first having obtained a permit from the City, if required by a separate ordinance for which the City may impose a reasonable fee. Permit conditions imposed on Company shall not be more burdensome than those imposed on other facilities for similar facilities or work. Company may, however, open and disturb the surface of any Public Way or Public Ground without a permit if (i) an emergency exists requiring the immediate repair of Electric Facilities and (ii) Company gives telephone notice to the City before, if reasonably possible, commencement of the emergency repair. Within two business days after commencing the repair, Company shall apply for any required permits and pay any required fees.

**3.3 Restoration.** After undertaking any work requiring the opening of any Public Way, the Company shall restore the Public Way in accordance with Minnesota Rules, part 7819.1100 and applicable City ordinances consistent with law. Company shall restore Public Ground to as good a condition as formerly existed, and shall maintain the surface in good condition for six (6) months thereafter. All work shall be completed as promptly as weather permits, and if Company shall not promptly perform and complete the work, remove all dirt, rubbish, equipment and material, and put the Public Ground in the said condition, the City shall have, after demand to Company to cure and the passage of a reasonable period of time following the demand, but not to exceed five days, the right to make the restoration of the Public Ground at the expense of Company. Company shall pay to the City the cost of such work done or performed by the City. This remedy shall be in addition to any other remedy available to the City for noncompliance with this Section 3.3. Company shall also post a construction performance bond consistent with provisions of the Minnesota Rules parts 7819.3000 and 7819.0100, subpart 6.

**3.4 Shared Use of Poles.** Company shall make space available on its poles or towers for City fire, water utility, police or other City facilities whenever such use will not interfere with the use of such poles or towers by Company, by another electric utility, by a telephone utility, or by any cable television company or other form of communication company. In addition, the City shall pay for any added cost incurred by Company because of such use by City.

**3.5 Avoid Damage to Electric Facilities.** The Company must take reasonable measures to prevent the Electric Facilities from causing damage to persons or property. The Company must take reasonable measures to protect the Electric Facilities from damage that could be inflicted on the Facilities by persons, property, or the elements. The Company must take protective measures when the City performs work near the Electric Facilities, if given reasonable notice to the City of such work prior to commencement.

**3.6 Notice of Improvements to Streets.** The City must give Company reasonable written Notice of plans for improvements to Public Ways where the City has reason to believe that Electric Facilities may affect or be affected by the improvement. The notice must contain: (i) the nature and character of the improvements, (ii) the Public Ways upon which the improvements are to be made, (iii) the extent of the improvements, and (iv) the time when the City will start the work, (v) if more than one Public Way is involved, the order in which the work is to proceed. The notice must be given to Company a sufficient length of time, considering seasonal working conditions, in advance of the actual commencement of the work to permit Company to make any additions, alterations or repairs to its Electric Facilities the Company deems necessary.

**3.7 Mapping Information.** The Company must promptly provide mapping information for any of its underground Electric Facilities in accordance with Minnesota Rules, part 7819.4000 and 7819.4100.

#### **SECTION 4. FACILITIES RELOCATION.**

**4.1 Relocation in Public Ways.** The Company shall comply with Minnesota Rules, part 7819.3100 and applicable City ordinances consistent with law.

#### **4.2 Relocation.**

Whenever City at its cost shall grade, regrade or change the line of any Public Way, or construct or reconstruct any City Utility System therein and shall, in the proper exercise of its police power, and with due regard to seasonable working conditions, when necessary, and after approval of its final plans have been obtained, order Company to relocate permanently its lines, services and other property located in said Public Way, Company shall relocate its facilities at its own expense. City shall give Company reasonable notice of plans to grade, regrade or change the line of any Public Way or to construct or reconstruct any City Utility System therein. However, after Company has so relocated, if a subsequent relocation or relocations shall be ordered within five years from and after first relocation, City shall reimburse Company for such non-betterment relocation expense which Company may incur on a time and material basis; provided, if subsequent relocations are required because of the extension of City Utility System to previously unserved areas, Company may be required to relocate at its own expense at any time.

Nothing contained in this franchise shall require Company to relocate, remove, replace or reconstruct at its own expense its facilities where such relocation, removal, replacement or reconstruction is solely for the convenience of the City and is not reasonably necessary for the construction or reconstruction of a Public Way or City Utility System or other City improvement.

Any relocation, removal, or rearrangement of any Company facilities made necessary because of the extension into or through City of a federally-aided highway project shall be governed by the provisions of Minnesota Statutes Section 161.46 as supplemented or amended; and further, it is expressly understood that the right herein granted to Company is a valuable property right and City shall not order Company to remove or relocate its facilities without compensation when a Public Way is vacated, improved or re-aligned because of a renewal or a redevelopment plan which is financially subsidized in whole or in part by the Federal Government or any agency thereof, unless the reasonable non-betterment costs of such relocation and the loss and expense resulting therefrom are first paid to Company.

The provisions of this franchise shall not be construed to waive or modify any rights obtained by Company for installations within a Company right-of-way acquired by easement or prescriptive right before the applicable Public Way or Public Ground was established, or Company's rights under state or county permit.

#### **SECTION 5. TREE TRIMMING.**

Unless otherwise provided in any permit or other reasonable regulation required by the City under separate ordinance, Company may trim all trees and shrubs in the Public Ways and Public Grounds of City to the extent Company finds necessary to avoid interference with the proper construction, operation, repair and maintenance of any Electric Facilities installed hereunder, provided that Company shall hold the City harmless from any liability arising therefrom.

#### **SECTION 6. INDEMNIFICATION.**

**6.1 Indemnity of City.** Company shall indemnify and hold City harmless from any and all liability, on account of injury to persons or damage to property occasioned by the construction, maintenance, repair, inspection, the issuance of permits, or the operation of the Electric Facilities located in the Public Ways and Public Grounds. The City shall not be indemnified for losses or claims occasioned through its own negligence except for losses or claims arising out of or alleging the City's negligence as to the issuance of permits for, or inspection of, Company's plans or work.

**6.2 Defense of City.** In the event a suit is brought against the City under circumstances where this agreement to indemnify applies, Company at its sole cost and expense shall defend the City in such suit if written notice thereof is promptly given to Company within a period wherein Company is not prejudiced by lack of such notice. If Company is required to indemnify and defend, it will thereafter have control of such litigation, but Company may not settle such litigation without the consent of the City, which consent shall not be unreasonably withheld. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the City; and Company, in defending any action on behalf of the City shall be entitled to assert in any action every defense or immunity that the City could assert in its own behalf. This franchise agreement shall not be interpreted to constitute a waiver by the City of any of its defenses of immunity or limitations on liability under Minnesota Statutes, Chapter 466.

**SECTION 7. VACATION OF PUBLIC WAYS.**

The City shall give Company at least two weeks prior written notice of a proposed vacation of a Public Way. The City and the Company shall comply with Minnesota Rules, 7819.3200 and applicable ordinances consistent with law.

**SECTION 8. ABANDONED FACILITIES.**

The Company shall comply with City ordinances, Minnesota Statutes, Section 216D.01 et seq. and Minnesota Rules Part 7819.3300, as they may be amended from time to time. The Company shall maintain records describing the exact location of all abandoned and retired Facilities within the City, produce such records at the City's request and comply with the location requirements of Section 216D.04 with respect to all Facilities, including abandoned and retired Facilities.

**SECTION 9. CHANGE IN FORM OF GOVERNMENT.**

Any change in the form of government of the City shall not affect the validity of this Ordinance. Any government until succeeding the City shall, without the consent of Company, succeed to all of the rights and obligations of the City provided in this Ordinance.

**SECTION 10. FRANCHISE FEE.**

**10.1 Form.** During the period of this franchise, the Company shall pay to the City a franchise fee based upon sales of electricity to all member/customers served by the Company within the corporate City limits of the City as they now exist or may hereafter be changed. The franchise fee shall be calculated by multiplying the total number of kilowatt hours of electricity sold times the cost per kilowatt hour of electricity to the Company's customers times a specified franchise fee percentage rate. The franchise fee percentage rate which may be adjusted from time to time by the City by Ordinance. The Company shall be notified at least six months prior to the effective date of any franchise fee percentage rate change.

**10.2 Separate Ordinance.** The franchise fee shall be initially imposed by separate ordinance duly adopted by the City Council, which ordinance shall not be initially adopted until at least thirty (30) days after written notice enclosing such proposed ordinance has been served upon the Company. The fee shall initially become effective ten (10) days after written notice enclosing such adopted ordinance has been served upon the Company by certified mail. Thereafter, the franchise fee shall be adjusted from time to time by a separate ordinance upon not less than six months notice to the Company.

**10.3 Condition of Fee.** The separate ordinance imposing the fee shall not be effective against the Company unless it lawfully imposes as a fee of the same or substantially similar amount on the sale of electric energy within the City by any other electric energy supplier, provided that, as to such supplier, the City has the authority to require a franchise fee pursuant to the existing franchise agreement.



**10.4 Collection of Fee.** The franchise fee shall be payable not less than quarterly during complete billing months of the period for which payment is to be made. The franchise fee formula may be changed from time to time; however, the change shall meet the same notice requirements and the fee may not be changed more often than annually. Such fee shall not exceed any amount that the Company may legally charge to its customers prior to payment to the City. Such fee is subject to subsequent reductions to account for uncollectibles and customer refunds incurred by the Company. The Company agrees to make available for inspection by the City at reasonable times all records necessary to audit the Company's determination of the franchise fee payments.

**10.5 Continuation of Franchise Fee.** If this franchise expires and the City and the Company are unable to agree upon terms of a new franchise, the franchise fee, if any being imposed by the City at the time this franchise expires, will remain in effect until a new franchise is agreed upon.

## **SECTION 11. PROVISIONS OF ORDINANCE.**

**11.1 Severability.** Every section, provision, or part of this Ordinance is declared separate from every other section, provision, or part; and if any section, provision, or part shall be held invalid, it shall not effect any other section, provision, or part; provided, however, that if the City is unable to enforce its franchise fee provisions for any reason the City will be allowed to amend the franchise agreement to impose a franchise fee pursuant to statute. Where as a provision of any other City ordinance conflicts with the provisions of this Ordinance, the provisions of this Ordinance shall prevail.

**11.2 Limitation on Applicability.** This Ordinance constitutes a franchise agreement between the City and Company as the only parties and no provision of this franchise shall in any way inure to the benefit of any third person (including the public at large) so as to constitute any such person as a third party beneficiary of the agreement or of any one or more of the terms hereof, or otherwise given rise to any cause of action in any person not a party hereto.

## **SECTION 12. AMENDMENT PROCEDURE.**

Either party to this franchise agreement may at any time propose that the agreement be amended. This Ordinance may be amended at any time by the City passing a subsequent ordinance declaring the provisions of the amendment, which amendatory ordinance shall become effective upon the filing of Company's written consent thereto with the City Clerk after City Council adoption of the amendatory ordinance.

This Ordinance shall be effective from and after its publication.

Adopted this 27th day of April, 2004.

By: \_\_\_\_\_  
Chris Gray, Mayor

ATTEST:

\_\_\_\_\_  
Tony Chladek  
City Administrator

**ELECTRIC FRANCHISE  
ORDINANCE 2016-5  
CITY OF STEWARTVILLE, OLMSTED COUNTY, MINNESOTA**

**AN ORDINANCE GRANTING TO PEOPLE'S ENERGY COOPERATIVE, ITS SUCCESSORS AND ASSIGNS, PERMISSION TO CONSTRUCT, OPERATE, REPAIR AND MAINTAIN IN THE CITY OF STEWARTVILLE, MINNESOTA, AN ELECTRIC DISTRIBUTION SYSTEM AND TRANSMISSION LINES, INCLUDING NECESSARY POLES, LINES, FIXTURES AND APPURTENANCES, FOR THE FURNISHING OF ELECTRIC ENERGY TO THE CITY AND ITS INHABITANTS AND OTHERS AND TRANSMITTING ELECTRIC ENERGY INTO AND THROUGH THE CITY AND TO USE THE PUBLIC RIGHT-OF-WAYS AND PUBLIC GROUNDS OF THE CITY OF STEWARTVILLE FOR SUCH PURPOSES.**

**THE CITY COUNCIL OF THE CITY OF STEWARTVILLE, OMLSTED COUNTY, MINNESOTA, ORDAINS:**

**SECTION 1. DEFINITIONS.**

Subd. 1. "City" means the City of Stewartville, County of Olmsted, State of Minnesota.

Subd. 2. "City Utility System" means the facilities used for providing non-energy related public service owned or operated by City or agency thereof, including sewer and water service, but excluding facilities for providing heating, lighting or other forms of energy.

Subd. 3. "Company" means People's Cooperative Services dba People's Energy Cooperative, a Minnesota corporation, its successors and assigns.

Subd. 4. "Notice," means a writing served by any party or parties on any other party or parties. Notice to Company shall be mailed to People's Energy Cooperative, 1775 Lake Shady Avenue South, Oronoco, Minnesota 55960. Notice to City shall be mailed to the City Administrator, 105 East 1st ST, PO Box 275, Stewartville, MN 55976. Either party may change its respective address for the purpose of this Ordinance by written notice to the other party.

Subd. 5. "Public Ground" means land owned by the City for park, open space or similar purpose, which is held for use in common by the public.

Subd. 6. "Public Right of Way" means any street, alley, walkway or other public right-of-way within the City.

**SECTION 2. GRANT OF FRANCHISE.**

The City hereby grants Company, for a period of 10 years from the date this Ordinance is passed and approved by the City, the exclusive right to transmit and furnish electric energy for light, heat, power and other purposes for public and private use within and through the limits of

City as its boundaries now exist or as they may be extended in the future. For these purposes, Company may construct, operate, repair and maintain electric distribution system and electric transmission lines, including poles, lines, fixtures, and any other necessary appurtenances in, on, over, under and across the Public Right-of-Ways and Public Grounds of City. Company may do all reasonable things necessary or customary to accomplish these purposes subject, however, to the further provisions of this franchise agreement. The City may establish construction standards within the City limits as long as they reflect standards typical of electric utilities and meet National, State and local code requirements.

### **SECTION 3. RESTRICTIONS.**

Subd. 1. Company facilities included in such electric distribution system, transmission lines and appurtenances thereto, shall be located and constructed so as not to interfere with the safety and convenience of ordinary travel along and over said Public Right-of-Ways. Company's construction, operation, repair, maintenance, and location of such facilities shall be subject to other reasonable regulations of the City to the extent not inconsistent with the terms of this franchise agreement. Company may abandon underground electric facilities in place, provided at City's request Company removes abandoned metal or concrete encased conduit interfering with a City improvement project to the extent such conduit is uncovered as part of the City improvement project; the foregoing shall not excuse Company from complying with any State law or regulation requiring removal of an environmental hazard.

Subd. 2. Company shall not construct any new installations within or upon any Public Grounds without receiving the prior written consent of an authorized representative of City for each such installation.

Subd. 3. In constructing, removing, replacing, repairing, or maintaining said poles, lines, fixtures, and appurtenances, Company shall, in all cases, place the Public Right-of-Ways in, on, under, or across which the same are located in as good condition as they were prior to said operation and maintain any restored paved surface in such condition as it was prior to said operation and maintain any restored paved surface in such condition for two years thereafter. City may require, on a case-by-case basis, the Company to post a construction performance bond, certificate of insurance, letter of credit or any other form of security or assurance that may be required, under a separate existing or future ordinance of the City, of a person or entity obtaining the City's permission on behalf of Company to install, replace or maintain facilities in a Public Way.

### **SECTION 4. TREE TRIMMING.**

Company is also granted the permission and authority to trim all trees and shrubs in the Public Right-of-Ways and Public Grounds of City to the extent Company finds necessary to avoid interference with the proper construction, operation, repair and maintenance of any poles, lines, fixtures or appurtenances installed in pursuance of the authority hereby granted, provided that Company shall hold City harmless from any liability in the premises.

**SECTION 5. SERVICE, RATES AND AREA.**

The area within the City in which Company may provide electric service is subject to the provisions of Minnesota Statutes, Sec. 216B.40.

Subd. 1. Franchise Fee. City may, at its discretion, impose a franchise fee on Company per Minnesota Statute Sec. 216B.36 upon 120-day's prior notice to Company. Such franchise fees may be billed to consumers in the city of Stewartville so as to make the fees revenue neutral.

**SECTION 6. RELOCATING.**

Subd. 1. Whenever City at its cost shall grade, regrade or change the line of any Public Way, or construct or reconstruct any City Utility System therein and shall, in the proper exercise of its police power, and with due regard to seasonable working conditions, when necessary, and after approval of its final plans have been obtained, order Company to relocate permanently its lines, services and other property located in said Public Way; Company shall relocate its facilities at its own expense. City shall give Company reasonable notice of plans to grade, regrade or change the line of any Public Way or to construct or reconstruct any City Utility System therein. However, after Company has so relocated, if a subsequent relocation or relocations shall be ordered within five years from and after first relocation, City shall reimburse Company for such non-betterment relocation expense which Company may incur on a time and material basis; provided, if subsequent relocations are required because of the extension of City Utility System to previously unserved areas, Company may be required to relocate at its own expense at any time.

Subd. 2. Nothing contained in this franchise shall require Company to relocate, remove, replace or reconstruct at its own expense its facilities where such relocation, removal, replacement or reconstruction is solely for the convenience of the City and is not reasonably necessary for the construction or reconstruction of a Public Way or City Utility System or other City improvement.

Subd 3. Any relocation, removal, or rearrangement of any Company facilities made necessary because of the extension into or through City of a State or federally-aided highway project shall be governed by the provisions of Minnesota Statutes Sec. 161.46 as supplemented or amended; and further, it is expressly understood that the right herein granted to Company is a valuable property right and City shall not order Company to remove or relocate its facilities without compensation when a Public Way is vacated, improved or re-aligned because of a renewal or a redevelopment plan which is financially subsidized in whole or in part by the Federal Government or any agency thereof, unless the reasonable non-betterment costs of such relocation and the loss and expense resulting therefrom are first paid to Company.

Subd. 4. The provisions of this franchise shall not be construed to waive or modify any rights obtained by Company for installations within a Company right-of-way acquired by easement or prescriptive right before the applicable Public Way or Public Ground was established, or Company's rights under state or county permit.

**SECTION 7. INDEMNIFICATION.**

Subd. 1. Company shall indemnify, keep and hold the City free and harmless from any and all liability on account of injury to persons or damage to property occasioned by the construction, maintenance, repair, inspection, issuance of permits, or operation of the electric facilities located in the Public Right-of-Ways and Public Grounds. The City shall not be indemnified for losses or claims occasioned through its own negligence except for losses or claims arising out of or alleging the City's negligence as to the issuance of permits for, or inspection of, Company's plans or work. The City shall not be indemnified if the injury or damage results from the performance in a proper manner of acts reasonably deemed hazardous by Company, and such performance is nevertheless ordered or directed by City after notice of Company's determination.

Subd. 2. In the event a suit is brought against the City where this indemnification obligation applies, Company, at its sole cost and expense, shall defend the City in such suit if written notice thereof is promptly given to Company within a period wherein Company is not prejudiced by lack of such notice. If Company is required to indemnify and defend, it will thereafter have control of such litigation, but Company may not settle such litigation without the consent of the City, which consent shall not be unreasonably withheld. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the City; and Company, in defending any action on behalf of the City shall be entitled to assert in any action every defense or immunity that the City could assert in its own behalf.

**SECTION 8. VACATION OF PUBLIC RIGHT-OF-WAYS.**

The City shall give Company at least two weeks prior written notice of a proposed vacation of a Public Way. Except where required solely for a City improvement project, the vacation of any Public Way, after the installation of electric facilities, shall not deprive Company of its rights to operate and maintain such electric facilities, until the reasonable cost of relocating the same and the loss and expense resulting from such relocation are first paid to Company. In no case, however, shall City be liable to Company for failure to specifically preserve a right-of-way, under Minnesota Statutes, Section 160.29.

**SECTION 9. WRITTEN ACCEPTANCE.**

Company shall, if it accepts this Ordinance and the rights and obligations hereby granted, file a written acceptance of the rights hereby granted with the City Clerk after the final passage and any required publication of this Ordinance. The City by Council resolution may revoke this franchise agreement if Company does not file a written acceptance within 90 days after publication.

**SECTION 10. GENERAL PROVISIONS.**

Subd. 1. Every section, provision, or part of this Ordinance is declared separate from every other section, provision or part; and if any section, provision or part shall be held invalid, it shall not affect any other section, provision or part. Where a provision of any other City ordinance conflicts with the provisions of this Ordinance, the provisions of this Ordinance shall prevail.

Subd. 2. If either party asserts that the other party is in default in the performance of any obligation hereunder, the complaining party shall notify the other party of the default and the desired remedy. The notification shall be written. Representatives of the parties must promptly meet and attempt in good faith to negotiate a resolution of the dispute. If the dispute is not resolved within 30 days of the written notice, the parties may jointly select a mediator to facilitate further discussion. The parties will equally share the fees and expenses of this mediator. If a mediator is not used or if the parties are unable to resolve the dispute within 30 days after first meeting with the selected mediator, either party may commence an action in District Court to interpret and enforce this franchise or for such other relief as may be permitted by law or equity for breach of contract, or either party may take any other action permitted by law.

Subd. 3. This Ordinance constitutes a franchise agreement between the City and Company as the only parties and no provision of this franchise shall in any way inure to the benefit of any third person (including the public at large) so as to constitute any such person as a third party beneficiary of the agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.

Subd. 4. Any change in the form of government of the City shall not affect the validity of this Ordinance. Any governmental unit succeeding the City shall, without the consent of Company, succeed to all of the rights and obligations of the City provided in this Ordinance.

Subd. 5. Nothing in this Ordinance relieves any person from liability arising out of the failure to exercise reasonable care to avoid damaging Company's facilities while performing any activity.

**SECTION 11. PUBLICATION EXPENSE.**

The expense of any publication of this franchise Ordinance required by law shall be paid by Company.

**SECTION 12. EFFECTIVE DATE.**

This Ordinance is effective as provided by statute or charter and upon acceptance by Company as provided in Section 9.

Adopted by the Stewartville City Council this 14th day of June, 2016

By: \_\_\_\_\_  
Jimmie-John King, Mayor

ATTEST:

\_\_\_\_\_  
Cheryl Roeder  
City Clerk