

ORDINANCE NO. 109, Second Series

**AN ORDINANCE RENEWING A FRANCHISE TO MEDIACOM MINNESOTA LLC TO
CONSTRUCT, OPERATE, AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE
CITY OF TWO HARBORS; SETTING FORTH CONDITIONS ACCOMPANYING
THE RENEWAL OF THE FRANCHISE; PROVIDING FOR REGULATION
AND USE OF THE SYSTEM; AND PRESCRIBING PENALTIES
FOR THE VIOLATION OF ITS PROVISIONS**

THE CITY COUNCIL OF THE CITY OF TWO HARBORS DOES HEREBY ORDAIN:

CABLE COMMUNICATION SYSTEM FRANCHISE RENEWAL AGREEMENT

The City of Two Harbors, Minnesota, hereinafter referred to as "the Franchising Authority" granted a franchise ("Franchise") to Mediacom Minnesota LLC, ("Grantee") a limited liability company duly organized and validly existing under the laws of the State of Delaware, hereinafter referred to as "the Grantee" to construct, operate and maintain a cable television system in the City pursuant to Ordinance No. 55, Second Series.

The Franchising Authority hereby acknowledges that the Grantee has substantially complied with the material terms of the current Franchise under applicable law, and that the financial, legal, and technical ability of the Grantee is reasonably sufficient to provide services, facilities, and equipment necessary to meet the future cable-related needs of the community, and having afforded the public adequate notice and opportunity for comment, desires to renew the Franchise pursuant to the terms of this Ordinance.

STATEMENT OF INTENT AND PURPOSE

The Franchising Authority intends, by the adoption of this Ordinance, to bring about the further development of a Cable Communications System and the continued operation of the same. Such development can contribute significantly to the communication needs and desires of the Franchising Authority and its residents. Further, the Franchising Authority may achieve better utilization and improvement of public services with the development and operation of a Cable Communications System.

Past studies by the Franchising Authority have led the way for organizing a means of procuring and securing a Cable Communications System that, in the judgment of the Council, is best suited to the Franchising Authority. This has resulted in the preparation and adoption of this Ordinance. The Franchising Authority intends, by this Ordinance, to renew the Franchise pursuant to the terms and provisions of this Ordinance. The terms and provisions of this Ordinance shall constitute the terms and provisions of the Franchise after the effective date of this Ordinance.

FINDINGS

In reviewing the Grantee's performance, the analysis of the community's future related cable needs and interests, and as a result of a public hearing, the City Council makes the following findings:

- A. The Grantee's technical ability, financial condition, legal qualifications, and character were considered and approved in a full public proceeding after due notice and a reasonable opportunity to be heard;
- B. The Franchise granted to Grantee by the Franchising Authority complies with Minnesota Statutes, federal laws and regulations;
- C. The Franchise granted to Grantee is nonexclusive;
- D. The Franchising Authority has the sole right and responsibility to regulate right-of-ways and easements for its various utilities in order to provide its citizens with appropriate services. Since Grantee has requested access to these right-of-ways and easements, the Franchising Authority should expect fair compensation from Grantee to offset the expenses necessary to manage the results of any construction, maintenance, and other activities by Grantee in such rights-of-way or easements. At no time does this document imply that any rights to manage and control such rights-of-way and easements have been turned over to Grantee.
- E. The Franchising Authority and the Grantee both desire a System with a state of the art design, and that such System incorporates fiber optic technology. Both parties recognize that technological changes and advances are rapidly occurring such that in the future other system designs may be more advantageous to both parties. Therefore, both parties agree to conduct periodic technology reviews as defined herein.

SECTION 1 DEFINITIONS

- 1.1 Definitions. For the purpose of this Franchise, 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:
 - 1.1.2 "Access" means the availability for noncommercial use by various agencies, institutions, organizations, groups and individuals in the community, including the City and its designees, of channel capacity on the Cable Communications System as permitted under applicable law including, but not necessarily limited to:
 - 1.1.2.1 "Public Access" means Access where community-based, noncommercial organizations, groups, or individual members of the general public, on a nondiscriminatory basis, are primary users.

- 1.1.2.2 “Educational Access” means Access where schools are the primary users having editorial control over programming and services. For purpose of this definition, “school” means any state accredited educational institution, public or private, including by way of example, primary and secondary schools, colleges, and universities.
- 1.1.2.3 “Governmental Access” means Access where governmental institutions or their designee are the primary users having editorial control over programming and services.
- 1.1.2.4 “Access Channel” means any Channel, or portion thereof, designated for Access purposes or otherwise made available to facilitate or transmit Access programming or services or information.
- 1.1.3 “Activated” means the status of any capacity or part of the Cable Communications System in which any Cable Service requiring the use of that capacity or part is available without further installation of System equipment, whether hardware or software.
- 1.1.4 “Affiliate” when used in connection with Grantee, means any person who owns or controls, is owned or controlled by, or is under common ownership with Grantee.
- 1.1.5 “Basic Cable Service” is the lowest priced tier of Cable Service that includes the retransmission of local broadcast television signals and any public, educational, and governmental access programming required by this Ordinance. Basic Cable Service as defined herein shall not be inconsistent with 47 U.S.C. § 543(b)(7).
- 1.1.6 “Cable Act” means Title VI of the Cable Act of 1934, as amended and correlating State laws.
- 1.1.7 “Cable Communications System” or “System” means a system of antennas, cables, wires, lines, towers, waveguides, or other conductors, converters designed and constructed for the purpose of producing, receiving, transmitting, amplifying, or distributing audio and video. System as defined herein shall not be inconsistent with the definition as set forth in Minn. Stat. § 238.02, subd. 3 and 47 U.S.C. § 522(6-7).
- 1.1.8 “Cable Services” shall mean (1) the one-way transmission to Subscribers of (a) video programming, or (b) other programming service, and (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service. This definition shall not include telephone services regulated pursuant to Minnesota Statutes § 237.01 et. seq. as may be amended from time to time nor shall this definition include other Non-Cable Services as herein defined.

- 1.1.9 “Cable System” shall mean the Grantee’s facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the Service Area. Cable System as defined herein shall not be inconsistent with the definition as set forth in Minnesota Statutes § 238.02, subdivision 3 and 47 U.S.C. § 522(7).
- 1.1.10 “City” means the City of Two Harbors, Minnesota.
- 1.1.11 “City Council” means the City Council of the City Two Harbors, Minnesota.
- 1.1.12 “Class IV Cable Communications Channel” means a signaling path provided by a Cable Communications System to and from a Subscriber terminal to another point in the System.
- 1.1.13 “Commercial Subscriber” means any subscriber other than a residential subscriber.
- 1.1.14 “Converter” means an electronic device which converts signals to a frequency acceptable to a television receiver of a Subscriber and by an appropriate selector permits a Subscriber to view all Subscriber signals included in the service.
- 1.1.15 “Drop” means the cable that connects the ground block on the Subscriber’s residence to the nearest feeder cable of the System.
- 1.1.16 “FCC” means Federal Communications Commission, or successor governmental entity thereto.
- 1.1.17 “Franchise” means the permission granted to Grantee by this Ordinance. The Franchise may also be referred to as this Ordinance.
- 1.1.18 “Franchise Area” means the area within the corporate boundaries of the City, including any areas annexed by the City during the term of this Franchise.
- 1.1.19 “Franchising Authority” means the City of Two Harbors, Minnesota.
- 1.1.20 “Grantee” means Mediacom Minnesota LLC, or the lawful successor, transferee, or assignee thereof.
- 1.1.21 “Gross Revenues” means all revenues received directly or indirectly, from the operation of the System within franchise area including but not limited to Basic Cable Services, Cable Service fees, Cable Programming Service fees, upgrade or downgrade fees, lockout device fees, optional video programming service tiers, pay per channel and pay per view services, install and reconnect fees, equipment rental fees, advertising revenue home shopping revenues The term Gross Revenues shall not include franchise fees, the FCC User Fee or any tax collected

by the Grantee from Subscribers for pass-through to a government agency. The parties intend for the definition of Gross Revenues to be as inclusive as possible consistent with existing applicable law. If there is a change in federal or state law subsequent to the Effective Date of this Franchise, such change shall not impact this definition unless the change specifically preempts the affected portion of the definition above except, to the extent that internet services are subsequently included in the definition of cable services by operation of a change in the federal law, Grantee and Franchising Authority agree to meet and confer in good faith whether the revenues from internet services shall be included in the calculation of gross revenues provided the Grantee give consideration to the impact of adding additional costs for comparable services provided by non-franchised providers in the City.

- 1.1.22 “Headend” means the electronic control center of a cable communications system, which includes antennas, preamplifiers, frequency converters, demodulators, modulators and other related equipment which receives, amplifies, filters and converts incoming signals to cable system channels.
- 1.1.23 “Hub” means an intermediary exchange point in the signal distribution portion of the System located between the Headend and the Nodes.
- 1.1.24 “Installation” means the connection of the System from feeder cable to the point of connection, including Standard Installations and custom installations.
- 1.1.25 “Leased Access Channel” means any Channel or portion of a Channel commercially available for Video Programming by Persons other than Grantee, for a fee or charge.
- 1.1.26 “Lockout Device” means an optional mechanical or electrical accessory to a Subscriber’s terminal which prohibits the viewing of a certain program, certain channel, or certain channels provided by way of the Cable Communication System. This device shall include, but not be limited to, the ability to remove excessively violent and sexually explicit programming for subscribers requesting this service.
- 1.1.27 “Node” means major demarcation point where the fiber optic signals of the System is converted to a RF signal or a coaxial base band video service.
- 1.1.28 “Non-Cable Services” means services the Grantee may wish to offer beyond Cable Communications Services or Cable Programming Services as herein defined. Non-cable services shall include but not be limited to, online, internet, e-mail, data and fax transmission, burglar/fire alarm, telephone, and cellular service.
- 1.1.29 “Normal Operating Conditions” means those service conditions that are within the control of the Grantee. Those conditions which are not within the control of the Grantee include, but are not limited to, natural disasters, labor strikes or

slowdowns, civil disturbances, power outages in excess of four (4) hours in length, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance of the Cable System.

- 1.1.30 “OVS” means Open Video System as contemplated by Title 47 U.S.C. § 573.
- 1.1.31 “Other Programming Service” means a Cable Service, other than a Video Programming service, that a cable operator makes available to all subscribers generally.
- 1.1.32 “Pay Television” means the delivery over the System of pay-per channel or pay-per-program audiovisual signals to Subscribers for a fee or charge, in addition to the charge for Basic Cable Service or other Cable Programming Services.
- 1.1.33 “PEG” means public, educational, and government access video programming.
- 1.1.34 “Person” means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity.
- 1.1.35 “Pole Agreement” means that certain Pole Attachment License Agreement between the City of Two Harbors, Minnesota and Mediacom Minnesota, LLC dated effective July 1, 2013.
- 1.1.36 “Public Way, Grounds, or Right-of-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 now or hereafter held by the Franchising Authority in the Service Area, but excluding any poles owned by the Franchising Authority, which shall entitle the Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System.
- 1.1.37 “Right of Way Ordinance” shall mean Ordinance No. 98, Second Series, adopted by the City Council on June 23, 2014.
- 1.1.38 “Service Area” means the present boundaries of the Franchising Authority, and shall include any additions thereto by annexation or other legal means, subject to the exceptions in subsection 3.9.
- 1.1.39 “Standard Installation” is defined as an installation which can be completed using a drop of 150 feet or less to the Subscriber’s terminal.
- 1.1.40 “State” means the State of Minnesota.

- 1.1.41 “Street” means the surface of, and the space above, below any public road, highway, freeway, lane, alley, path, court, sidewalk, parkway, or drive, or any easement or right-of-way now or hereafter held by Franchising Authority.
- 1.1.42 “Subscriber” means any Person who lawfully receives Cable Communications Service or Cable Programming Service. In the case of multiple office buildings or multiple dwelling units, the “Subscriber” means the lessee, tenant or occupant.
- 1.1.43 “Two-way” means that the Cable System is capable of providing both upstream and downstream transmissions.
- 1.1.44 “Video Programming” means programming provided by, or generally considered comparable to programming provided by a television broadcast station.

SECTION 2

GRANT OF FRANCHISE AND GENERAL PROVISIONS

- 2.1 Franchise Required. It shall be unlawful for any Person to construct, operate, or maintain a Cable Communications System in City unless such Person or the Person for whom such action is being taken shall have first obtained and shall currently hold a valid Franchise Agreement. It shall also be unlawful for any Person to provide Cable Programming or Cable Communication Service in City unless such Person shall have first obtained and shall currently hold a valid Franchise.
- 2.2 Level Playing Field. All Franchises granted by Franchising Authority shall contain substantially the same terms and conditions and shall not be more favorable or less burdensome than those applied to Grantee.
- 2.3 Grant of Franchise. The Franchising Authority hereby grants to the Grantee a nonexclusive Franchise which authorizes the Grantee to construct and operate a Cable System 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 such facilities and equipment as may be necessary or appurtenant to the Cable System for the transmission and distribution of Cable Services, data services, information and other communications services or for any other lawful purposes. The Franchise shall comply with the Minnesota franchise standards as contemplated by Minnesota Statutes § 238.084.
- 2.4 Previous Franchises. Upon acceptance by Grantee, the Franchise renewed by this Ordinance shall supersede and replace any previous agreement granting a Franchise to Grantee to own, operate, and maintain a Cable System within the City.
- 2.5 Other Ordinances, Agreements, Resolutions, and Applicable Laws. The Grantee agrees to comply with the terms of any lawfully adopted local ordinance, any agreement

between Grantee and Franchising Authority, the lawful exercise of police power, statutory rights, and the right of eminent domain by the Franchising Authority, including, without limiting the generality of the foregoing, Right of Way Ordinance and the Pole Agreement. The provisions of this Ordinance shall be read in conjunction with the provisions of the Right of Way Ordinance and Pole Agreement. All provisions of this Ordinance, Right of Way Ordinance and Pole Agreement should be read so as to give effect to all of the provisions thereof. In the event there are any provisions in this Ordinance, the Right of Way Ordinance or the Pole Agreement that are inconsistent with other terms, the provision that is most favorable to the Franchising Authority shall control and be applicable.

- 2.6 Conformation with State and Federal Laws and Regulations. The Franchising Authority and Grantee agree to conform to state and federal laws and regulations regarding cable communications not later than one year after such laws or regulations become effective as contemplated by Minnesota Statutes § 238.084, subdivision 1(b).
- 2.7 Other Authorizations. The Franchising Authority shall not permit any person to provide services similar to those provided by the Grantee in the Service Area without first having secured a non-exclusive franchise from the Franchising Authority. The Franchising Authority agrees that any grant of additional franchises or other authorizations including OVS authorizations by the Franchising Authority to provide services similar to those provided by the Grantee pursuant to this Agreement to any other entity shall cover the entire Service Area and shall not be on terms and conditions more favorable or less burdensome to the grantee of any such additional franchise or other authorization than those which are set forth herein. In any renewal of this Ordinance, the Franchising Authority, should it seek to impose increased obligations upon the Grantee, must take into account any additional franchise(s) or authorizations previously granted and find that the proposed increased obligations in the renewal, are not more burdensome and/or less favorable than those contained in any such additional franchise(s) or authorizations.
- 2.8 Franchise Term. This Franchise shall be in effect for a period of ten (10) years from the date of acceptance by Grantee, unless renewed, revoked or terminated sooner as herein provided. On the fifth year, upon request of either the Franchising Authority or the Grantee, the parties may conduct a technology and service review in order to determine whether the Grantee has met the technology and service goals contained herein as well as all other terms and conditions of this Franchise Agreement. If, during the term of this Franchise Agreement, the Minnesota State Legislature enacts a state level cable/video franchising law, the Grantee and Franchising Authority agree to meet and confer in good faith to review the state level cable/video franchising law and this Franchise Agreement.

SECTION 3 STANDARDS OF SERVICE

- 3.1 Conditions of Occupancy. The Cable System installed by the Grantee pursuant to the terms hereof shall be in compliance with the Right of Way Ordinance and Pole Agreement and 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 such Public Ways. The provisions of this Section 3 are subject to the provisions of Section 2.5 of this Ordinance.

3.2 Construction Codes and Permits.

3.2.1 Permits. Grantee shall obtain all necessary permits from the Franchising Authority before commencing any construction upgrade or extension of the System, including the opening or disturbance of any Street, or private or public property within City. Grantee shall strictly adhere to all state and local laws and building and zoning codes currently or hereafter applicable to construction, operation or maintenance of the System in City and give due consideration at all times to the aesthetics of the property.

3.2.2 Franchise Authority Right of Inspection. The Franchise Authority shall have the right to inspect all construction or installation work performed pursuant to the provisions of the Franchise and to make such tests at its own expense as it shall find necessary to ensure compliance with the terms of the Franchise and applicable provisions of local, state and federal law.

3.2.3 Repair of Streets and Property. Any and all Streets or public property or private property, which are disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance or reconstruction of the System shall be promptly and fully restored by Grantee, at its expense, to a condition as good as that prevailing prior to Grantee's work, and in a manner and quality approved by the proper municipal authority in the case of streets and other public property. The Grantee shall exercise reasonable care to maintain the same thereafter in good condition. In the case of opening any street or public property, the Grantee shall restore the pavement and the foundation to as good a condition prior to the construction. All work shall be performed with due diligence. If Grantee shall fail to promptly perform the restoration required herein, to remove all dirt and rubbish and to put the streets, public or private property back into good condition, the Franchising Authority shall have the right to put the streets, public, or private property back into good condition at the expense of the Grantee and the Grantee shall, upon demand, pay to the Franchising Authority the cost of such work done or performed plus fifteen percent of such cost to cover the Franchising Authority's administrative expense. This remedy is in addition to any other remedies available to the Franchising Authority for noncompliance with any provisions of this Franchise.

3.3 Conditions on Use of Public Ways.

3.3.1 Franchising Authority Right of Use. Nothing in this franchise Agreement shall be construed to prevent the Franchising Authority from constructing sewers, grading, paving, repairing, and/or altering any street or public way, or laying down, repairing or removing water mains or constructing or establishing any other

public work. If any property of Grantee shall interfere with the construction or repair of any street or public improvement, whether it be construction, repair or removal of sewer or water main, the improvement of a street or any other public improvement, all System line or other equipment or appurtenances shall be removed and/or replaced in such manner as shall be directed by the Franchising Authority so that such lines, equipment and appurtenances shall not interfere with the public work of the Franchising Authority, and that such removal or replacement shall be at the sole expense of the Grantee. The Franchising Authority shall give the Grantee reasonable notice of the undertaking of public improvements which affect the Grantee's System, except provided that in cases of emergency as determined by the Franchising Authority, the Franchising Authority may relocate, replace, or change any part of the System placed on Franchising Authority property by the Grantee, or perform any other work in connection with the System that may be reasonably required to further Franchising Authority needs.

- 3.3.2 Location of System. All System transmission and distribution structures, lines and equipment erected by the Grantee within City shall be located so as not to obstruct or interfere with the proper use of Streets, alleys and other public ways and places, and to cause minimum interference with the rights of property owners who abut any of the said Streets, alleys and other public ways and places, and not to interfere with existing public utility installations. Nothing contained in this Franchise Agreement shall relieve a person from liability arising out of the failure to exercise reasonable care to avoid injuring the Grantee's facilities while performing work connected with grading, regrading, or changing the line of a street or public place or with the construction or reconstruction of a sewer or water system.
- 3.3.3 Franchising Authority Right to Alter. If at any time during the period of this Franchise, the Franchising Authority shall elect to alter, or change the grade or location of any Street, alley or other public way, the Grantee shall, at its own expense, upon ten (10) days notice by Franchising Authority, remove and relocate its poles, wires, cables, conduits, manholes and other fixtures of the System, and in each instance comply with the standards and specifications of the Franchising Authority.
- 3.3.4 Vacation of Public Way. In the event any street or public way or portion thereof used by the Grantee shall be vacated by the Franchising Authority or use thereof discontinued during the term of this Franchise, Grantee shall either remove or so arrange for the maintenance of its facilities in such vacated street or portion thereof so that the public interest is protected. The Franchising Authority is not required to specifically preserve a right-of-way.
- 3.3.5 Interference with Other Fixtures. The Grantee shall not place poles, conduits, or other fixtures of System above or below ground where the same will interfere with any gas, electric, telephone, water or other utility fixtures and all such poles,

conduits, or other fixtures placed in any Street or public way shall be so placed as to comply with all requirements of the Franchising Authority.

3.3.6 Relocation for Third Party. The Grantee shall, on request of any Person holding a moving permit issued by the Franchising Authority or other governmental entity, temporarily move its wires or fixtures to permit the moving of buildings with the expense of such temporary removal to be paid in advance by the Person requesting the same, and the Grantee shall be given reasonable advance written notice to arrange for such relocation. For purposes of this subsection, "reasonable advance written notice" shall be no less than thirty (30) business days in the event of a temporary relocation, and no less than one hundred twenty (120) days for a permanent relocation.

3.3.7 Relocation for the Franchising Authority. Upon its receipt of ten (10) days notice, the Grantee shall protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way, any property of the Grantee when lawfully required by the 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 public structures or improvements which are not used to compete with the Grantee's services. The Grantee shall in all cases have the right of abandonment of its property.

3.3.8 Trimming of Trees. The Grantee shall have the authority to trim any trees upon and overhanging the Streets, alleys, sidewalks, or public easements of City so as to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee, provided that the Grantee must save the City harmless from any liability or costs incurred, including reasonable attorney's fees, arising therefrom, and will be subject to reasonable permit or other reasonable regulations of the City.

3.4 Undergrounding of Cable.

3.4.1 Undergrounding. In all areas of City where all other utility lines are placed underground, Grantee shall construct and install its cables, wires and other facilities underground. Amplifier boxes and pedestal mounted terminal boxes may be placed above ground if existing technology reasonably requires, but shall be of such size and design and shall be so located as not to be unsightly or unsafe. Grantee shall, whenever possible, install its cables, wires and facilities in concert with the installation of new or replacement electrical cables, wires and facilities installed by the City.

3.4.2 Pole Use In Underground Area. In any area of City where there are certain cables, wires and other like facilities of a public utility or public utility district underground and at least one operable cable, wire or like facility of a public utility or public utility district suspended above the ground from poles Grantee may

construct and install its cables, wires and other facilities from the same pole with the consent of the owner of the pole and in compliance with the Pole Agreement.

3.4.3 Easements. Grantee shall be granted access to any easements granted to a public utilities annexed by Franchising Authority or new developments.

3.4.4 Location of facilities. Grantee shall in this regard comply in all respects with the "Gopher State One Call" procedures, timetables and regulations. Grantee, in the event that excavation in proximity to Grantee's main feeder line, shall standby or be prepared to respond in the event of a line cut.

3.5 Erection and Removal of Poles. No poles, conduits, or other wire-holding structures shall be erected or installed by the Grantee without prior approval of the Franchising Authority with regard to location, height, type and other pertinent aspects and in compliance with the Pole Agreement.

3.6 Safety Requirements.

3.6.1 Grantee Care. The Grantee shall at all times employ ordinary and reasonable care and shall install and maintain in use nothing less than commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public. The Grantee must take reasonable measures to protect the System from damage that could be inflicted on the System by persons, property, or the elements.

3.6.2 Installation and Maintenance in Accordance with Code. The Grantee shall install and maintain its System wires, cables, fixtures and other equipment in accordance with the requirements of the most recent edition of the National Electric Safety Code ("NESC") and all FCC, national, state, and local regulations, and in such manner that they will not interfere with any installations of City or of any public utility serving City. All linework, both overhead and underground shall be completed in a timely manner in a workman like manner and in accordance with good construction practices. All System structures and all System lines, equipment and connections in, over, under and upon the Streets, sidewalks, alleys, and public ways and places of City, wherever situated or located, shall at all times be kept and maintained in good condition, order, and repair so that the same shall not menace or endanger the life or property of any Person.

3.7 Use of Franchising Authority Poles. Grantee may use poles owned by Franchising Authority only if approved in writing by the Franchising Authority and only if such use is in full compliance with all applicable ordinances, laws, rules and regulations, including the Pole Agreement.

3.8 Access to Open Trenches. The Franchising Authority agrees to include the Grantee in the platting process for any new subdivision. At a minimum, the Franchising Authority agrees to require as a condition of issuing a permit for open trenching to any utility or

developer that (A) the utility or developer give the Grantee at least ten (10) days advance written notice of the availability of the open trench, and (B) that the utility or developer provide the Grantee with reasonable access to the open trench. Notwithstanding the foregoing, the Grantee shall not be required to utilize any open trench.

3.9. Required Extensions of the Cable System. Grantee agrees to provide Cable Service to all residences in the Service Area subject to the density requirements specified in this subsection. Whenever the Grantee receives a request for Cable Service from a potential Subscriber in an unserved area contiguous to Grantee's existing distribution facilities where there are at least 25 residences within one cable mile from the portion of the Grantee's trunk or distribution cable which is to be extended, it shall extend its Cable System to such Subscribers at no cost to said Subscribers for the Cable System extension, other than the published Standard/non-Standard Installation fees charged to all Subscribers. All residences within the one cable shall be included in the determination of whether the 25 residences number has been reached. Notwithstanding the foregoing, the Grantee shall have the right, but not the obligation, to extend the Cable System into any portion of the Service Area where another operator is providing Cable Service, into any annexed area which is not contiguous to the present Service Area of the Grantee, or into any area which is financially or technically infeasible due to extraordinary circumstances, such as a runway or freeway crossing.

3.10. Subscriber Charges for Extensions of the Cable System. No Subscriber shall be refused service arbitrarily. However, if an area does not meet the density requirements of subsection 3.8 above, the Grantee shall only be required to extend the Cable System to Subscriber(s) in that area if the Subscriber(s) are willing to share the capital costs of extending the Cable System. Specifically, the Grantee shall contribute a capital amount equal to the construction cost per mile, multiplied by a fraction whose numerator equals the actual number of residences per one cable mile from the Grantee's trunk or distribution cable, and whose denominator equals 10. Subscribers who request service hereunder shall bear the remaining cost to extend the Cable System on a *pro rata* basis. The Grantee may require that payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance. Subscribers shall also be responsible for any Standard/non-Standard Installation charges to extend the Cable System from the tap to the residence.

3.11. Developer Charges for Extensions of the Cable System. The Franchising Authority may institute an ordinance to require future developers, where feasible, to provide extensions of cable service from the nearest node to the new development. The cost of the extension is to be borne by the Grantee and the developer in an exact ratio to which the homes per mile are deficient in relation to the provisions of Section 3.8 hereof. Example: If there are ten homes per mile, the Grantee would pay 10/25 of the cost (40%); and the developer would pay 15/25 of the cost (60%) of such extension.

3.12. Cable Service to Public Buildings. Subject to applicable law, the Grantee, upon request, shall provide without charge, a Standard Installation and one outlet of Basic Cable Service to those administrative buildings owned and occupied by the Franchising

Authority identified on Exhibit A that are being served by Grantee on the Effective Date and such other buildings as Franchising Authority and Grantee determine necessary, provided that the buildings are located within two hundred (200') feet of the Cable System. The Cable Service provided shall not be distributed beyond the originally installed outlet without authorization from the Grantee. The Cable Service provided shall not be used for commercial purposes. The Franchising Authority shall take reasonable precautions to prevent any inappropriate use of the Grantee's Cable System or any loss or damage to Grantee's Cable System. The Franchising Authority shall hold the Grantee harmless from any and all liability or claims arising out of the provision and use of Cable Service required by this subsection. The Grantee shall not be required to provide an outlet to such buildings where a non-Standard Installation is required, unless the Franchising Authority or building owner/occupant agrees to pay the incremental cost of any necessary Cable System extension and/or non-Standard Installation. If additional outlets of Basic Cable Service are provided to such buildings, the building owner/occupant shall pay the usual installation and service fees associated therewith.

- 3.13 Reimbursement of Costs. If funds are available to any Person using the Public Way for the purpose of defraying the cost of any of the foregoing, the Franchising Authority shall reimburse the Grantee in the same manner in which other Persons affected by the requirement are reimbursed. If the funds are controlled by another governmental entity, the Franchising Authority shall make application for such funds on behalf of the Grantee.

SECTION 4

REGULATION BY THE FRANCHISING AUTHORITY

4.1 Franchise Fee.

- 4.1.1 Franchise Fee. Grantee shall pay to City a franchise fee in an amount equal to the maximum amount permitted under federal law, which is presently five percent (5%) of its annual Gross Revenues. Provided however, that if a federal law permits a higher Franchise Fee, Grantee's Franchise Fee obligations may not be increased unless the same increase is imposed upon other entities holding Cable Franchises in the City. Such increase shall go into effect no less than ninety (90) days after written notice from the City to Grantee. The City recognizes that Grantee, at its sole discretion, may allocate revenue between Cable Services (which are subject to the Franchise Fee) and non-Cable Services (which are not subject to the Franchise Fee but may be subject to other fees and/or taxes) on bundled packages of services. No allocation shall violate this Franchise or have the effect of remitting an unfair or unlawfully disproportionate payment of Franchise Fees to the City. In the event that the City believes that Grantee's allocation methodology violates the preceding section, the City and the Grantee shall meet upon advance notice from the City to discuss and resolve the City's concerns. If the City and the Grantee cannot agree on the matter within a reasonable period of time, the City and the Grantee shall submit the matter to a mutually agreeable third party for mediation. The cost of the mediation shall be shared equally between the City and the Grantee. If the City and the Grantee are

unable to mutually agree on a mediator, then either the City or the Grantee can bring the matter to a court of competent jurisdiction, or pursue any other remedies available to them in this Franchise or by law. No acceptance of any payment from Grantee shall be construed as an accord by the City that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the City may have for further or additional sums payable or for the performance of any other obligation of Grantee.

- 4.1.2 Reports. Each payment shall be accompanied by a written report to the City, verified by an authorized representative of Grantee, containing an accurate statement in summarized form, as well as in detail, of Grantee's Gross Revenues and the computation of the payment amount. Such reports shall detail all Gross Revenues of the Cable System by this Franchise. The Franchising Authority may request additional information that it deems appropriate, including, but not necessarily limited to, all customer complaints and resolutions of said complaints, changes in any system maps, and plans for further extension of service in the upcoming year.
- 4.1.3 No Reduction. The fees payable hereunder are a contractual obligation of Grantee to the Franchising Authority and have been determined based upon good faith bargaining between Grantee and Franchising Authority. The fees payable hereunder shall not be changed without agreement of the parties notwithstanding changes in federal or state law. Provided, however, that if Grantee requests that such fees be changed as a result of changes in federal or state law, then, in that event such request for change in the fees should be deemed to be a request for a renewal of this franchise under Section 626 of the Cable Communications Policy Act and the Franchising Authority shall be entitled to proceed in accordance with the provisions of Section 626 of the Cable Communications Policy Act, § U.S.C. § 546.
- 4.1.4 Audit. On a maximum annual basis, upon thirty (30) days prior written notice, the City shall have the right to conduct an independent audit of Grantee's records reasonably related to the administration or enforcement of this Franchise. If the audit shows that Franchise Fee payments have been underpaid by three percent (3%) or more, Grantee shall pay the total cost of the audit, such cost not to exceed \$5,000. The City's right to audit and the Grantee's obligation to retain records related to this subsection shall expire three (3) years after each Franchise Fee payment has been made to the City. Nothing shall prevent Grantee from collecting from customers any amount identified by audit of either PEG or franchise fees due to the Franchising Authority that were not previously collected from customers.
- 4.2 Rates and Charges. The Franchising Authority may regulate rates for the provision of Basic Cable Service and equipment as expressly permitted by federal law.

- 4.2.1 Public Inspection. A list of Grantee's current Subscriber rates and charges shall be on file with Franchising Authority and shall be available for public inspection. Grantee shall give Franchising Authority and Subscribers written notice of any change in a rate or charge no less than thirty (30) days prior to the effective date of the change. Grantee shall disclose to the Franchise Authority the procedure by which the Subscriber rates are established unless such disclosure is contrary to state or federal law.
- 4.2.2 Franchise Authority Jurisdiction. In the event that the Franchising Authority elects to exercise jurisdiction over rates, it shall after notice, hold a public hearing for the consideration of views of interested parties with respect to rates and any subsequent proposed changes in rates.
- 4.3 Sales Procedures. Grantee shall not exercise deceptive sales procedures when marketing within the franchise area. Grantee shall have the right to market its cable services door-to-door during reasonable hours consistent with local ordinances and regulation.
- 4.4 Subscriber Contract, Subscriber Inquiry, and Complaint Procedures.
- 4.4.1 Customer Service Procedures. The Grantee shall develop and maintain procedures shall meet or exceed the standards established by FCC regulations. Grantee shall, upon request of the Franchising Authority, supply a copy of the Grantee's Customer Service Procedures.
- 4.4.2 Toll Free Number. Grantee shall have a publicly listed toll-free telephone number and be operated so as to receive Subscriber complaints and requests on a twenty-four (24) hour-a-day, seven (7) days-a-week basis.
- 4.4.3 Customer Service. Grantee shall maintain adequate numbers of telephone lines and personnel to respond in a timely manner to schedule service calls and answer Subscriber complaints or inquiries in a manner consistent with regulations adopted by the Federal Communications Commission at 46 C.F.R. § 76.309.
- 4.4.4 Repair Requests. Subscriber requests for repairs shall be performed, to the extent possible, within twenty-four (24) hours of the request unless conditions beyond the control of Grantee prevent such performance.
- 4.4.5 Records of Complaints/Reports. Subject to the privacy provisions of 47 U.S. Code § 551 et seq. (2001), Grantee shall prepare and maintain written records of all complaints made to them and the resolution of such complaints, including the date of such resolution. Such written records are to be on file at the office of Grantee. Upon request, Grantee shall provide Franchising Authority with a written summary of such complaints and their resolution on an annual basis.
- 4.4.6 Subscriber Contracts. Upon request, Grantee shall submit any Subscriber contract utilized to the Franchising Authority. If no written contract exists, Grantee shall

file with the City Clerk a document completely and concisely stating the terms of the residential Subscriber contract offered to customers, specifically including the length of the Subscriber contract. The terms of any Subscriber contract shall be available for public inspection during normal business hours.

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

4.5 Renewal of Franchise.

4.5.1 Conformance with Law. 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 renewal provisions of federal and state law.

4.5.2 Informal Negotiations. Notwithstanding anything to the contrary set forth in this subsection 4.5, the Grantee and the Franchising Authority may agree, while affording the public appropriate notice and opportunity to comment in accordance with the provisions of federal and state law to undertake and finalize informal negotiations regarding renewal of the then current Franchise and the Franchising Authority may grant a renewal thereof. Nothing herein shall require the parties to conduct informal negotiations, nor shall the parties be prevented from following the formal procedures set forth in the Cable Act.

4.6 Conditions of Sale. If a renewal or extension of the 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 the price determined pursuant to the provisions set forth in Section 627 of the Cable Act, 47 U.S. Code § 547. The Grantee and the Franchising Authority agree that in the case of a final determination of a lawful revocation of the Franchise, the Grantee shall be given at least twelve (12) months to effectuate a transfer of its Cable System to a qualified third party. Furthermore, the Grantee shall be authorized to continue to operate pursuant to the terms of its prior Franchise during this period. If, at the end of that time, the Grantee is unsuccessful in procuring a qualified transferee or assignee of its Cable System which is reasonably acceptable to the Franchising Authority, the Grantee and the Franchising Authority may avail themselves of any rights they may have pursuant to federal or state law. It is further agreed that the Grantee's continued operation of the Cable System during the twelve (12) month period shall not be deemed to be a waiver, nor an extinguishment of, any rights of either the Franchising Authority or the Grantee.

4.7 Transfer of Franchise. The Grantee's right, title, or interest in the Franchise shall not be sold, transferred, assigned, or otherwise encumbered, other than to an entity controlling, controlled by, or under common control with the Grantee or sell or transfer stock so as to

create a new controlling interest as contemplated by Minnesota Statutes § 238.083, without prior written notice to the Franchising Authority and approval of the Franchising Authority. Such approval of the Franchising Authority shall not be unreasonably withheld and conditioned upon that any sale or transfer is completed in accordance with the provisions of Minnesota Statutes § 238.083. No such notice shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or Cable System in order to secure indebtedness. In the event that the Franchise or Cable System is to be transferred or sold, the Franchising Authority has the right to purchase the system as provided in Minnesota Statutes Chapter 238.

SECTION 5 ACCESS PROVISIONS

5.1 Public, Educational, and Government Access.

- 5.1.1 Operation of PEG Access. The Franchising Authority or its designee is hereby designated to operate, administer, promote, and manage access (public, education, and government programming) (hereinafter “PEG access”) to the cable system established pursuant to this Section 5. Grantee shall have no responsibility whatsoever for PEG access except as expressly stated in this Section 5.
- 5.1.2 Dedication of Channels. Grantee will continue to provide to the Franchising Authority throughout the term of this Franchise the current Access channel capacity currently in use by the Franchising Authority as a Public and Government access channel. In accordance with federal law, Grantee will be entitled to use any PEG access channel capacity for the provision of other services at any time such channel capacity is not being used for the designated PEG access purposes.
- 5.1.3 Activation of Additional Channels. The Franchising Authority may request an additional PEG access channel for purposes of education programming within the school district. Such channel shall be considered an Educational Access Channel that would allow for the two-way activation between government and education. Construction of the cable plant to the new Two Harbors High School, if necessary, and/or the utilization of existing cable plant may require the Grantee, the Franchising Authority, and other parties to execute a line extension agreement. An additional channel shall be added any time thereafter should a need arise. The Franchising Authority shall provide ninety (90) days prior written notice to Grantee of the Franchising Authority’s intent to activate the additional channels and shall allow Grantee a reasonable time (not to exceed 180 days) to rearrange Cable Programming Services to accommodate the Franchising Authority’s request.
- 5.1.4 Designation of Channels. In accordance with Minnesota Statutes § 238.084, Grantee shall provide to each of its Subscribers who receive all, or part of the total

services offered on the System reception on at least two (2) specially designated access channels available for use by the general public on a first-come, first-served, nondiscriminatory basis. The specially designated access channel may be used by local education authorities and local government on a first-come, first served, nondiscriminatory basis during those hours when the channel is not in use by the general public. During those hours that the specially designated access channel is not bring used by the general public, local educational authorities or local governments, the Grantee shall release time to commercial or noncommercial users on a first-come, first-served, nondiscriminatory basis if the demand for that time arises. The Grantee may also use the specially designated access channel for local origination during those hours when the channel is not in use by the general public, local educational authorities, local government or commercial or noncommercial users who have leased time. The VHF spectrum must be used for the firm specially designated access channel required in the section. Grantee shall designate the channel locations of any other access channels.

- 5.1.5 Relocation of Channels and Reimbursement of Franchise Authority Expenses. In the event that the Grantee changes the designation of Access channels, Grantee shall pay the reasonable expenses of the Franchise Authority or its designee associated with the re-designation or relocation of the Access channels. Grantee further agrees to assist in the promotion of the new channel location or designation and otherwise advise the subscribers of the new channel location or designation.
- 5.1.6 Quality of Channels. The Grantee shall ensure that reception and/or broadcast on the Access channels shall be the same quality as other channels on its basic tier.
- 5.1.7 Periodic Access Evaluations. Upon written request from Franchising Authority to Grantee, Grantee and Franchising Authority shall meet to evaluate public access channel issues. Both parties agree to discuss any proposal for modification presented by the other party. Nothing herein shall presume or require consent to any such proposed modification by Franchising Authority. Modifications to public access may only occur by mutual written consent of both parties. The notice and meeting contemplated herein shall be required to occur no more than every three (3) years after adoption of this Ordinance, however, nothing shall prevent mutually agreed upon negotiations between both parties at any time.
- 5.1.8 Charges for Use. Channel time and playback of prerecorded programming on the specially designated access channel must be provided without charge to the general public, except that personnel, equipment and production costs may be assessed by Franchising Authority for live studio presentations exceeding five (5) minutes in length. Charges for production costs must be consistent with the goal of affording the public a low-cost means of television access.
- 5.1.9 Access Rules.

5.1.9.1 Franchising Authority shall implement rules for use of any specially designated access channels. The initial access rules and any amendments thereto shall be in on file with Franchising Authority and available for public on during normal business hours.

5.1.9.2 Prior to the cablecast of any program on any PEG access channel established herein, Franchising Authority shall require any Person who requests access (public, education, and government) to the System to provide written certification in a form and substance acceptable to Grantee and Franchising Authority which releases indemnifies, and holds harmless Franchising Authority, Grantee and their respective employees, offices, agents, and assigns from any liability, cost, damages and expenses, including reasonable expenses for legal fees arising or connected in any way with said program.

5.2 PEG Support/Capital Grants. During the term of this Franchise Agreement, should the Franchising Authority increase the programming on the current PEG channel, request activation of additional PEG channels, or enter into a form of agreement to share programming with other municipalities that require additional equipment, Grantee and the Franchising Authority shall meet and confer in good faith to review a capital grant request by the Franchising Authority. If a capital grant is paid to the Franchising Authority, the Grantee reserves the right to recoup the grant in accordance with applicable law.

5.2.1 PEG Fee. The Franchising Authority may, upon ninety (90) days written notice to Grantee, request the implementation of a monthly per subscriber, per month, fee in an amount not to exceed the maximum amount allowed by law to support PEG Access operation and programming ("PEG fee"). In the event that the PEG fee is implemented, the Franchising Authority and the Grantee shall mutually agree upon the language to be utilized for the PEG fee line item to be listed in the subscriber's monthly bills. The PEG fee and related records shall be subject to accounting and inspection in the same manner as the franchise fee. In the event that the PEG fee is implemented, the Franchising Authority, in its sole discretion, may opt to discontinue the PEG fee upon providing Grantee ninety (90) days written notice.

SECTION 6

OPERATION AND ADMINISTRATION PROVISIONS

6.1 Administration of Franchise. The Franchising Authority or other designee shall have continuing regulatory jurisdiction and supervision over the Cable System and Grantee's operation under the Franchise. The Franchising Authority may issue such reasonable rules and regulations concerning the construction, operation and maintenance of the Cable System as are consistent with the provisions of the Franchise and state and federal law.

- 6.2 Programming Decisions. All programming decisions remain the sole discretion of Grantee provided that Grantee notifies the Franchising Authority and Subscribers in writing thirty (30) days prior to any channel additions, deletions, or realignments, and further subject to Grantee's signal carriage obligations pursuant to 47 U.S.C. §§ 531-536, and subject to the Franchising Authority's rights pursuant to 47 U.S.C. § 545. Grantee shall conduct programming surveys from time to time to obtain input on programming decisions from Subscribers.
- 6.3 Operation and Maintenance of System. The Grantee shall render effective service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such interruption, to the extent feasible, shall be preceded by notice required herein and shall occur during periods of minimum use of the System.
- 6.4 Technical Standards. The technical standards used in the operation of the System shall comply, at minimum, with the technical standards promulgated by the FCC relating to cable communications systems pursuant to the Federal Communications Commission's rules and regulations and found in Title 47, Section 76.601 to 76.617, as may be amended or modified from time to time, which regulations are expressly incorporated herein by reference.
- 6.5 Special Testing. The Franchising Authority may require special testing of a location or locations within the System if there is a particular matter of controversy or unresolved complaints pertaining to such location(s). Demand for such special tests may be made on the basis of complaints received or other evidence indicating an unresolved controversy or noncompliance. Such tests shall be limited to the particular matter in controversy or unresolved complaints. The Franchising Authority shall endeavor to so arrange its request for such special testing so as to minimize hardship or inconvenience to Grantee or to the Subscribers caused by such testing. Before ordering such tests, Grantee shall be afforded thirty (30) days to correct problems or complaints upon which tests were ordered. The Franchising Authority shall meet with Grantee prior to requiring special tests to discuss the need for such and, if possible, visually inspect those locations which are the focus of concern. If, after such meetings and inspections, the Franchising Authority wishes to commence special tests and the thirty (30) days have elapsed without correction of the matter in controversy or unresolved complaints, the tests shall be conducted by a qualified engineer selected by the Franchising Authority. In the event that special testing is required by Franchising Authority to determine the source of technical difficulties, the cost of said testing shall be borne by the Grantee if the testing reveals the source of the technical difficulty to be within Grantee's reasonable control. If the testing reveals the difficulties to be caused by factors which are beyond Grantee's reasonable control then the cost of said test shall be borne by the Franchising Authority,

SECTION 7 BOOKS AND RECORDS

- 7.1 Review. The Grantee agrees that the Franchising Authority, upon thirty (30) days written notice to the Grantee may review such of its books and records at the Grantee's business office, during normal business hours and on a nondisruptive basis, as is reasonably necessary to ensure compliance with the terms of this Franchise. Such notice shall specifically reference the subsection of the Franchise that is under review so that the Grantee may organize the necessary books and records for easy access by the Franchising Authority. Alternatively, if the books and records are not easily accessible at the local office of the Grantee, the Grantee may, at its sole option, choose to pay the reasonable travel costs of the Franchising Authority's representative to view the books and records at the appropriate location. The Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years. Notwithstanding anything to the contrary set forth herein, the Grantee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature, nor disclose books and records of any affiliate which is not providing Cable Service in the Service Area. The Franchising Authority agrees to treat any information disclosed by the Grantee 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. The Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act, 47 U.S. Code § 551.
- 7.2 FCC Reports. The results of tests required to be filed by Grantee with the FCC are available on a FCC website: publicfiles.fcc.gov.

SECTION 8 INSURANCE AND INDEMNIFICATION

- 8.1 Insurance Requirements. The Grantee shall maintain insurance in full force and effect, at its own cost and expense, in an amount as the Franchising Authority may require during the term of the Franchise. The Franchising Authority shall be designated as an additional insured and such insurance shall be noncancellable except upon thirty (30) days prior written notice to the Franchising Authority. Upon written request, the Grantee shall provide a Certificate of Insurance showing evidence of the coverage required by this subsection.
- 8.2 Performance Bond.
- 8.2.1 Bond in Effect for Term of Franchise. At the time the Franchise becomes effective and at all times thereafter, until the Grantee has liquidated all of its obligations with the Franchising Authority, the Grantee shall furnish a bond to the Franchising Authority in the amount of Twenty Five Thousand Dollars (\$25,000) in a form and with such sureties as reasonably acceptable to the Franchising Authority. This bond will be conditioned upon the faithful performance of the

Grantee according to the term of the Franchise and upon the further condition that in the event the Grantee shall fail to comply with any law, ordinance or regulation governing the Franchise, there shall be recoverable jointly and severally from the principal and surety of the bond any damages or loss suffered by Franchising Authority as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the Grantee, plus a reasonable allowance for attorneys' fees and costs, up to the full amount of the bond, and further guaranteeing payment by the Grantee of claim, liens and taxes due to the Franchising Authority which arise by reason of the construction, operation, or maintenance of the System. The rights reserved by the Franchising Authority with respect to the bond are in addition to all other rights it may have under the Franchise or any other law. The Franchising Authority may, from year to year, in its sole discretion increase or decrease the amount of the bond when there is a reasonable basis for said change.

- 8.2.2 Additional Bond. If at any time Grantee undertakes additional construction of the System, by way of a line extension, rebuild, upgrade or otherwise, with a projected cost in excess of One Hundred Thousand and No/100 Dollars (\$100,000.00), Grantee shall provide an additional bond to Franchising Authority in the amount equivalent to one hundred fifteen percent (115%) of the projected construction cost in excess of \$100,000.00 and shall maintain such bond during the term of said additional construction. Upon completion of said additional construction, Grantee shall provide written notice to Franchising Authority. Within thirty (30) day of receipt of notice of completion of said construction Franchising Authority shall give written notice to Grantee indicating whether Franchising Authority agrees the construction is complete or specifying those items of construction which Franchising Authority determines are not complete.
- 8.2.3 Written Notice that Corrective Action Exceeds Thirty Days. The time for Grantee to correct any violation or liability, shall be extended by Franchising Authority if the necessary action to correct such violation or liability is of such a nature or character as to require more than thirty (30) days within which to perform, provided Grantee provides written notice that it requires more than thirty (30) days to correct such violations or liability, commences the corrective action within the thirty (30) days period and thereafter uses reasonable diligence to correct the violation or liability.
- 8.2.4 Collection Against Bond. In the event this Franchise is cancelled by reason of default of Grantee or revoked, Franchising Authority shall be entitled to collect from the performance bond that amount which is attributable to any damages sustained by Franchising Authority pursuant to said default or revocation. Grantee, however, shall be entitled to the return of such performance bond, or portion thereof as remains at the expiration of the term of the Franchise.
- 8.2.5 Rights Additional. The rights reserved to Franchising Authority with respect to the performance bond are in addition to all other rights of Franchising Authority

whether reserved by this Franchise or authorized by law, and no action, proceeding or exercise of a right with respect to the performance bond shall affect any other right the Franchising Authority may have.

- 8.3 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 in the Service Area provided that the Franchising Authority shall give the Grantee written notice of its obligation to indemnify the Franchising Authority within ten (10) days of receipt of a claim or action pursuant to this subsection. Notwithstanding the foregoing, the Grantee shall not indemnify the Franchising Authority for any damages, liability or claims resulting from the willful misconduct or negligence of the Franchising Authority.

8.4 Security Fund.

- 8.4.1 Provision of Security. At the time of acceptance of this Franchise, Grantee shall deliver to the Franchising Authority a Security ("Security") for the performance of its obligations hereunder, in form and substance acceptable to the Franchising Authority and the City Attorney, in the amount of Five Thousand Dollars and No/100 (\$5,000.00).
- 8.4.2 Payment of Security to Franchising Authority. The Security shall be provided on the condition that funds will be paid to Franchising Authority, upon written demand of Franchising Authority, and after the procedures of this Section have been complied with, in payment of penalties charged pursuant to this Section, in payment for any monies owed by Grantee pursuant to its obligations under this Franchise, or in payment for any damage incurred as a result of any acts or omissions by Grantee pursuant to this Franchise.
- 8.4.3 Per Day Penalty. In addition to recovery of any monies owed by Grantee to Franchising Authority or damages to Franchising Authority as a result of any acts or omissions by Grantee pursuant to the Franchise, the Franchising Authority in its sole discretion may charge to and collect from the Security for failure to comply with any of the provision of this Franchise a penalty of One Hundred Dollars (\$100.00) per day for each day, or part thereof, that such failure occurs or continues.
- 8.4.4 Prior Written Notice. Whenever Franchising Authority finds that Grantee has violated one or more terms, conditions or provisions of this Franchise, a written notice shall be given to Grantee, specifying the alleged violation. At any time thirty (30) days after receipt of such notice by Grantee, provided Grantee remains in violation of one or more terms, conditions or provisions of this Franchise, the Franchising Authority may draw from the Security all penalties and other monies due Franchise Authority from the date of the receipt by Grantee of such notice.

- 8.4.5 Statement of Dispute. Whenever notice of an alleged violation has been received by Grantee, Grantee may, within thirty (30) days of receipt of such notice, notify the Franchising Authority that there is a dispute as to whether a violation or failure has, in fact occurred. Such notice by Grantee to the Franchising Authority shall specify with particularity the matter disputed by Grantee and shall toll the running of the time periods set forth in this Section. The Franchising Authority shall consider Grantee's dispute at the next regularly scheduled or specially scheduled Cable Commission meeting. The Cable Commission of the Franchise Authority shall make its decision on the matter based on written findings of fact made by it.
- 8.4.6 Renewal or Replacement of Security. If the Security or any subsequent Security delivered thereto expires prior to the expiration of the Franchise, it shall be renewed or replaced during the term of this Franchise to provide that it will not expire earlier than the expiration of this Franchise. The renewed or replaced Security shall be in form and substance acceptable to the Franchising Authority and its City Attorney. If the Franchising Authority draws upon the Security or any subsequent Security delivered pursuant hereto, in whole or in part, Grantee shall replace and restore the amount withdrawn from the Security to the Security within fifteen (15) days. If any Security is not so replaced, Franchising Authority may draw on said Security for the whole amount thereof and hold the proceeds, without interest, and use the proceeds to pay costs incurred by Franchising Authority in performing and paying for any or all of the obligations, duties and responsibilities of Grantee under this Franchise that are not performed or paid by Grantee pursuant hereof, including attorneys' fees incurred by the Franchising Authority in so performing and paying or evidencing the performance of Grantee hereunder.
- 8.4.7 Rights Additional. In the event that the Security is not renewed nor replaced, the Franchising Authority shall have the right to draw upon the Performance Bond for each violation until such time that the Security is renewed or replaced. The Franchising Authority, is not required however, to first act against the Security before acting against the Performance Bond. In addition, Franchising Authority shall have whatever other rights and remedies are available to Franchising Authority at law in equity or pursuant to the terms of this Franchise to enforce Grantee's performance hereunder.

SECTION 9 ENFORCEMENT AND TERMINATION OF FRANCHISE

- 9.1 Notice of Violation. In the event that the Franchising Authority believes that the Grantee has not complied with the any material term of the Franchise, the Franchising Authority shall informally discuss the matter with Grantee. If these discussions do not lead to resolution of the problem, the Franchising Authority shall notify the Grantee in writing of

the exact nature of such alleged noncompliance. The Franchising Authority shall have the right, in its sole discretion, to take action against the Grantee's bonds or security fund as set forth in Section 6 in addition to the provisions set forth herein.

- 9.2 The Grantee's Right to Cure or Respond. The Grantee shall have thirty (30) days from receipt of the notice described in subsection 9.1: (A) to respond to the Franchising Authority, contesting the assertion of such noncompliance, or (B) to cure such default, or (C) in the event that, by the nature of such default, it 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.
- 9.3 Public Hearing. In the event that the Grantee fails to respond to the notice described in subsection 9.1 pursuant to the procedures set forth in subsection 9.2, or in the event that the alleged default is not remedied within thirty (30) days or the date projected pursuant to 9.2(C) above, if it intends to continue its investigation into the default, then the Franchising Authority shall schedule a public hearing. The Franchising Authority shall provide the Grantee at least ten (10) days prior written notice of such hearing, which specifies the time, place and purpose of such hearing, and provide the Grantee the opportunity to be heard.
- 9.4 Enforcement. Subject to applicable federal and state law, in the event the Franchising Authority, after the hearing set forth in subsection 9.3, determines that the Grantee is in material default of any provision of the Franchise, the Franchising Authority may:
- 9.4.1 Commence an action at law for monetary damages or seek other equitable relief; or
- 9.4.2 In the case of repeated or ongoing substantial non-compliance with a material term or terms of the Franchise, seek to revoke the Franchise in accordance with subsection 9.5.
- 9.5 Revocation. Should the Franchising Authority seek to revoke the Franchise after following the procedures set forth in subsections 9.1-9.4 above, the Franchising Authority shall give written notice to the Grantee of its intent. The notice shall set forth the exact nature of the repeated or ongoing substantial noncompliance with a material term or terms of the franchise. The Grantee shall have ninety (90) days from such notice to object in writing and to state its reasons for such objection. In the event the Franchising Authority has not received a satisfactory response from the Grantee, it may then seek termination of the Franchise at a public hearing. The Franchising Authority shall cause to be served upon the Grantee, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise. At the designated hearing, Grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce relevant evidence, to require the production of evidence, to compel the relevant testimony of the officials, agents, employees or consultants of the Franchising

Authority, to compel the testimony of other persons as permitted by law, and to question witnesses. A complete verbatim record and transcript shall be made of such hearing. Following the hearing, the Franchising Authority shall determine whether or not the Franchise shall be revoked. If the Franchising Authority determines that the Franchise shall be revoked, the Franchising Authority shall promptly provide Grantee with its decision in writing. The Grantee may appeal such determination of the Franchising Authority to an appropriate court which shall have the power to review the decision of the Franchising Authority *de novo*. Grantee shall be entitled to such relief as the court finds appropriate. Such appeal must be taken within sixty (60) days of Grantee's receipt of the determination of the Franchising Authority. The Franchising Authority may, at its sole discretion, take any lawful action which it deems appropriate to enforce the Franchising Authority's rights under the Franchise in lieu of revocation of the Franchise.

- 9.6 Force Majeure. The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control. This provision includes work delays caused by waiting for utility providers to service or monitor their utility poles to which the Grantee's Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary. Furthermore, the parties hereby agree that it is not the Franchising Authority's intention to subject the Grantee to penalties, fines, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on the Subscribers within the Service Area, or where strict performance would result in practical difficulties and hardship to the Grantee which outweigh the benefit to be derived by the Franchising Authority and/or Subscribers.
- 9.7 Abandonment of Service. Grantee may not abandon the System or any portion thereof without having first given six (6) months written notice to Franchising Authority. Grantee may not abandon the System or any portion thereof without compensating Franchising Authority for damages resulting from the abandonment.
- 9.8 Removal After Abandonment, Termination, or Forfeiture. In the event of abandonment, termination, or forfeiture of the Franchise, the Franchising Authority shall have the right to require Grantee to remove all or any portion of the System from all Streets and public property within City, subject to the provisions of Minn. Stat. 237.01 et seq. If Grantee has failed to commence removal of System, or such part thereof as was designated by the Franchising Authority, within one hundred twenty (120) days after written notice of Franchising Authority's demand for removal is given, or if Grantee has failed to complete such removal within twelve (12) months after written notice of Franchising Authority's demand for removal is given, the Franchising Authority shall have the right to declare all right, title, and interest to the System to be in the Franchising Authority with all rights of ownership including, but not limited to, the right to operate the System or transfer the System to another for operation by it pursuant to the provisions of 47 U.S.C. § 547.

SECTION 10 PROTECTION OF INDIVIDUAL RIGHTS

10.1 Discriminatory Practices Prohibited. Grantee shall not deny service, deny access, otherwise discriminate against Subscribers or general citizens on the basis of race, color, religion, national origin, sex or age. Grantee shall comply at all times with all other applicable federal, state, and city laws, and all executive and Administrative orders relating to nondiscrimination.

10.2 Subscriber Privacy.

10.2.1 Monitoring of Viewing Habits. No signals including signals of a Class IV Channel may be transmitted from a Subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the Subscriber. The request for such permission shall be contained in a separate document with a prominent statement that the Subscriber is authorizing the permission in full knowledge of its provisions. Such written permission shall be for a limited period of time not to exceed one (1) year which shall be renewed at the option of the Subscriber. No penalty shall be invoked for a Subscriber's failure to provide or renew such authorization. The authorization shall be revocable at any time by the Subscriber without penalty of any kind whatsoever. Such permission shall be required for each type or classification of Class IV Channel activity planned for the purpose of monitoring individual viewing patterns or practices.

10.2.2 Data. No information or data obtained by monitoring transmission of a signal from a Subscriber's terminal or any other means, including but not limited to lists of the names and addresses of such Subscribers or any lists that identify the viewing habits of Subscribers shall be sold or otherwise made available to any party other than to Grantee and its employees for internal business use, and also to the Subscriber subject of that information, unless Grantee has received specific written authorization from the Subscriber to make such data available.

10.2.3 Permission not Required to Verify Integrity of System/Billing. Written permission from the Subscriber shall not be required for the conducting of System wide or individually addressed electronic sweeps for the purpose of verifying System integrity or monitoring for the purpose of billing. Confidentiality of such information shall be subject to the provision set forth herein.

SECTION 11 CONNECTIONS AND MODIFICATIONS

- 11.1 Unauthorized Connections or Modifications Prohibited. It shall be unlawful for any firm person, group, company, corporation, or governmental body or agency, without the express consent of the Grantee, to make or possess or assist anybody in making or possessing any connection, extension, or division, whether physically, acoustically, inductively, electronically or otherwise, with or to any segment of the System.
- 11.2 Removal or Destruction Prohibited. It shall be unlawful for any firm, Person, group, company, corporation, or government body or agency to willfully interfere, tamper, remove, obstruct, or damage, or assist thereof, any part or segment of the System for any purpose whatsoever.
- 11.3 Penalty. Any firm, Person, group, company, corporation or government body or agency found guilty of violating this section shall be guilty of a misdemeanor for each and every subsequent offense. Each continuing day of the violation shall be considered a separate consequence.

SECTION 12 MISCELLANEOUS PROVISIONS

- 12.1 Actions of Parties. In any action by the Franchising Authority or the Grantee that is 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. Grantee shall not be relieved of its obligations to comply with any provision of this Franchise by reason of failure or delay of the Franchising Authority to enforce prompt compliance. Nor does the failure or delay on part of the Franchising Authority constitute a waiver of any rights under the terms and conditions of the Franchise. Any waiver must be in writing and approved by the Franchising Authority. Any waiver by the Franchising Authority of a breach or violation of any provision of the Franchise shall not operate as or be construed to be a waiver of any subsequent breach or violation.
- 12.2 Entire Agreement. This Franchise constitutes the entire agreement between the Grantee and the Franchising Authority and supersedes all other prior understandings and agreements oral or written. Any amendments to this Franchise shall be mutually agreed to in writing by the parties.
- 12.3 Reservation of Rights. Acceptance of the terms and conditions of this franchise will not constitute, or be deemed to constitute, a waiver, either expressly or impliedly, by Grantee of any constitutional or legal right which it may have or may be determined to have, either by subsequent legislation or court decisions. The Franchising Authority acknowledges that Grantee reserves all of its rights under applicable Federal and State

Constitutions and laws. If at any time during the term of this franchise, federal, state or local law permits any provider of video programming to provide services such as those provided pursuant to this franchise either without obtaining a franchise from the Franchising Authority or on terms or conditions more favorable than those applicable to the Grantee, then this franchise shall at the sole discretion of the Grantee: (1) cease to be in effect; or (2) be deemed to expire at a date prior to the original expiration date selected by the Grantee; or (3) will be automatically reformed to grant to the Grantee the more favorable terms, benefits and conditions available to the other provider.

- 12.4 Notice. Unless expressly otherwise agreed between the parties, every notice or response required by this Franchise to be served upon the Franchising Authority or the Grantee shall be in writing, and shall be deemed to have been duly given to the required party when placed in a properly sealed and correctly addressed envelope: a) upon receipt when hand delivered with receipt/acknowledgment, b) upon receipt when sent certified, registered mail, c) within five (5) business days after having been posted in the regular mail or d) or the next business day if sent by express mail or overnight air courier.

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

City of Two Harbors
Attn: City Administrator
522 First Avenue
Two Harbors, MN 55616

With a separate copy to:

City of Two Harbors Cable Commission
522 First Avenue
Two Harbors, MN 55616

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

Mediacom Minnesota LLC
Vice President, Regulatory
& Legal Affairs
One Mediacom Way
Mediacom Park, New York 10918

With a copy to: Mediacom Minnesota LLC
Group Vice President
1504 Second Street Southeast
Waseca, MN 56093

The Franchising Authority and the Grantee may designate such other address or addresses from time to time by giving notice to the other in the manner provided for in this subsection.

- 12.5 Descriptive Headings. The captions to Sections and subsections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.
- 12.6 Severability. If any Section, subsection, 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, subsection, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise.
- 12.7 Term and Effective Date. The Effective Date of this Ordinance is the date of final adoption by the Franchising Authority as set forth below subject to Grantee's acceptance by countersigning where indicated below. This Franchise shall be for a term of ten (10) years in accord with section 2.8 and shall expire on June 30, 2030 unless otherwise renewed, revoked, or terminated earlier as herein provided.

SECTION 13 PUBLICATION EFFECTIVE DATE, ACCEPTANCE, AND EXHIBITS

- 13.1 Publication Effective Date. A summary of this Ordinance shall be published in accordance with applicable Minnesota law. After adoption and the publication of a summary of this Ordinance, the effective date of this Franchise shall be the date of acceptance by Grantee in accordance with the provisions of acceptance with provisions of Section 13.2.
- 13.2 Acceptance.
- 13.2.1 Acceptance. Grantee shall accept this Ordinance within sixty (60) days of its enactment by the City Council unless the time for acceptance is extended by the Franchising Authority. Such acceptance by the Grantee shall be deemed the grant of this Franchise and for all purposes. In the event acceptance does not take place, this Franchise and any and all rights previously granted to Grantee shall be null and void.
- 13.2.2 Binding Effect. Upon acceptance of this Franchise, Grantee shall be bound by all the terms and conditions contained herein.
- 13.2.3 Means of Acceptance. Grantee shall accept this Ordinance in the following manner: (1) acceptance of this Ordinance must be properly executed and acknowledged by Grantee and delivered to Franchising Authority; (2) Grantee

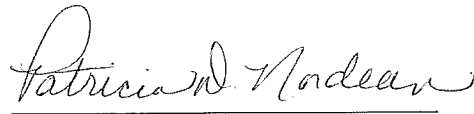
shall have continuing responsibility for its obligations under Franchise, and if Grantee be a subsidiary or wholly-owned corporate entity of a parent corporation, performance of this Franchise shall be secured by a written grantee of the parent corporation in a form and substance acceptable to Franchising Authority, which shall be delivered with the executed Franchise; and (3) By delivering the performance bond insurance certificate and Security as required hereunder.

- 13.3 Publication Expenses. The expense of the publication of a summary of this Ordinance shall be paid by the Grantee.

ADOPTED, this _____ day of _____, 2020.

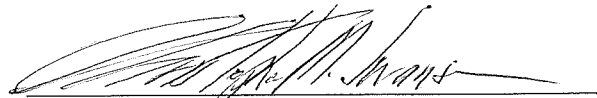


President, City Council

ATTEST: 

City Clerk

APPROVED, by the Mayor of the City of Two Harbors this _____ day of _____, 2020.



Mayor, City of Two Harbors

ACCEPTED: The terms of the foregoing Ordinance are accepted and the undersigned agrees to be bound by its terms and conditions.

MEDIACOM MINNESOTA LLC

By _____

Printed Name: _____

Title: _____

SUMMARY PUBLISHED: _____

EFFECTIVE DATE: _____

Exhibit A – Section 3.12 Cable Service to Public Buildings

The following buildings are owned and occupied by the Franchising Authority or is a public building. This exhibit may be amended from time to time during the course of the Franchise.

1. Public Utilities Building – North Campus, 503 20th Avenue, Two Harbors, Minnesota 55616
2. Two Harbors Water Treatment Plant, 1 Park Rd, Two Harbors, MN 55616
3. Two Harbors Wastewater Treatment Facility, Lighthouse Point Road, NW 1/4 of SW 1/4 of Section 6, Township 52 North, Range 10 West, Two Harbors, Minnesota 55616
4. Two Harbors Community Center, 417 South Avenue, Two Harbors, Minnesota 55616
5. Lake County Court House/LEC, 601 3rd Ave, Two Harbors, MN 55616
6. Two Harbors Fire House, Intersection of Lake Co Hwy 2 and 20th Avenue, Two Harbors, MN 55616
7. Two Harbors Library, 320 Waterfront Dr, Two Harbors, MN 55616
8. Minnehaha Elementary School, 421 7th St, Two Harbors, MN 55616
9. City Hall, 522 1st Ave, Two Harbors, MN 55616
10. Municipal Liquor Store, 630 7th Ave, Two Harbors, MN 55616
11. Burlington Bay Municipal Campground, Highway 61 and Park Road, Two Harbors, MN 55616
12. Club House – Municipal Golf Course, 1349 MN-61, Two Harbors, MN 55616

MEDIACOM CABLE TELEVISION FRANCHISE RENEWAL

TIMELINE

- February 1** – A draft ordinance is prepared by the City Attorney.
February 15
- February 15** – The City and Mediacom negotiate the terms of the ordinance
March 3
- March 9, 2020** First reading of Ordinance
- March 23, 2020** Second reading of Ordinance
- April 13, 2020** Third reading of Ordinance and Resolution approving Summary
- April 23, 2020** Summary of Ordinance published
- July 1, 2020** Effective date of Ordinance