

CABLE TELEVISION FRANCHISE ORDINANCE

FOR THE

CITY OF DULUTH, MINNESOTA

AND

**CC VIII OPERATING, LLC
D/B/A CHARTER COMMUNICATIONS**

**Adopted May 8, 2006
Effective July 9, 2006**

TABLE OF CONTENTS

Section 1.	Definitions.	<u>1</u>
Section 2.	Uses Permitted by Grantee.	<u>5</u>
Section 3.	Non-Exclusivity of Grant	<u>5</u>
Section 4.	Duration of Franchise.	<u>6</u>
Section 5.	Previous Franchises	<u>6</u>
Section 6.	Payment to the City	<u>6</u>
Section 7.	Limitations of Franchise.	<u>7</u>
Section 8.	Location of Grantee's Properties.	<u>8</u>
Section 9.	City Rights in Franchise	<u>9</u>
Section 10.	Change Required by Public Improvements.	<u>9</u>
Section 11.	Failure to Perform Street Work	<u>10</u>
Section 12.	Performance Bond	<u>10</u>
Section 13.	Indemnification of the City	<u>10</u>
Section 14.	Inspection of Property and Property Records	<u>12</u>
Section 15.	Reports to the City	<u>13</u>
Section 16.	Picture Quality and Technical Requirements	<u>13</u>
Section 17.	Consumer Service Requirements	<u>13</u>
Section 18.	Emergency Use of Facilities	<u>17</u>
Section 19.	Miscellaneous Provisions	<u>18</u>
Section 20.	Rates	<u>18</u>
Section 21.	Service to Institutions	<u>18</u>
Section 22.	Live Broadcast Facilities and Two-Way Network	<u>19</u>
Section 23.	City-wide Service	<u>20</u>

Section 24.	Rights of Individuals	<u>20</u>
Section 25.	Channel Capacity	<u>20</u>
Section 26.	Interconnection	<u>21</u>
Section 27.	Periodic Review and Renegotiation	<u>21</u>
Section 28.	Special Channel and Access Requirements	<u>21</u>
Section 29.	Notice and Default	<u>24</u>
Section 30.	Foreclosure	<u>25</u>
Section 31.	Receivership	<u>25</u>
Section 32.	Abandonment	<u>26</u>
Section 33.	Purchase of System	<u>26</u>
Section 34.	Franchise Renewal	<u>26</u>
Section 35.	Written Notice	<u>26</u>
Section 36.	Severability	<u>27</u>
Section 37.	Force Majeure	<u>27</u>
Section 38.	Effective Date/Acceptance	<u>27</u>
Section 39.	City Charter	<u>27</u>
Section 40.	Publication	<u>28</u>
Exhibit A	Franchise Fee Payment Worksheet	A
Exhibit B	Service to Public and Private Buildings	B
Exhibit C	Two-Way Connection to Public Institutions	C
Exhibit D	Thirty Party Confidentiality	D

ORDINANCE NO.

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

STATEMENT OF INTENT AND PURPOSE

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

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

FINDINGS

In review of the request for renewal by Grantee and negotiations related thereto, the City Council makes the following findings:

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

NOW, THEREFORE,

The City of Duluth does ordain:

Section 1. Definitions.

For the purposes of this Franchise, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words

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. The word “may” is directory and discretionary and not mandatory; the words “shall” and “will” are mandatory and not merely directory or discretionary. Words not defined shall be given their common and ordinary meaning.

- (a) “Applicable Laws” means any law, statute, charter, ordinance, rule, regulation, code, license, certificate, franchise, permit, writ, ruling, award, executive order, directive, requirement, injunction (whether temporary, preliminary or permanent), judgment, decree or other order issued, executed, entered or deemed applicable by any governmental authority.
- (b) “Basic Cable Service” means any service tier which includes the lawful retransmission of local television broadcast signals and any public, educational, and governmental access programming required by the Franchise to be carried on the basic tier. Basic Cable Service as defined herein shall not be inconsistent with 47 U.S.C. § 543(b)(7).
- (c) “Cable Service” or “Service” means (A) the one-way transmission to Subscribers of (i) Video Programming or (ii) Other Programming Service, and (B) Subscriber interaction, if any, which is required for the selection or use of such Video Programming or Other Programming Service. Cable Service as defined herein shall not be inconsistent with the definition set forth in 47 U.S.C. § 522(6).
- (d) “City” means the City of Duluth, a municipal corporation of the state of Minnesota, in its present incorporated form, or in any later recognized, consolidated, enlarged or reincorporated form.
- (e) “Channel” or “Cable Channel” means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television Channel as defined by the FCC. Cable Channel as defined herein shall not be inconsistent with the definition set forth in 47 U.S.C. § 522(4).
- (f) “Converter” means an electronic device which converts signals to a frequency acceptable to a television receiver of a Subscriber.
- (g) “Council” the present governing body of the City or any future board constituting the legislative body of the City.
- (h) “Drop” means the cable that connects the ground block on the Subscriber’s residence to the nearest feeder cable of the System.
- (i) “FCC” means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.

(j) “Franchise” or “Cable Franchise” means this franchise ordinance and the regulatory and contractual relationship established hereby.

(k) “Franchise Fee” includes any tax, fee, or assessment of any kind imposed by the City or other governmental entity on Grantee or Subscriber, or both, solely because of their status as such. It does not include any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their services but not including a tax, fee, or assessment which is unduly discriminatory against cable operators or cable Subscribers); capital costs which are required by the Franchise to be incurred by Grantee for public, educational, or governmental access facilities; requirements or charges incidental to the awarding or enforcing of the Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or any fee imposed under Title 17 of the United States Code. Franchise Fee defined herein shall not be inconsistent with the definition set forth in 47 U.S.C. § 542(g).

(l) “Grantee” is CC VIII Operating, LLC, d/b/a Charter Communications, its lawful successors, transferees or assignees.

(m) “Gross Revenue” means any and all revenue derived by Grantee from the operation of its Cable System to provide Cable Service within the City including, but not limited to, 1) all Cable Service fees, 2) Franchise Fees, 3) late fees and returned check fees, 4) Installation and reconnection fees, 5) upgrade and downgrade fees, 6) local, state and national advertising revenue, 7) home shopping commissions, 8) equipment rental fees, and 9) guide revenue. The term “Gross Revenue” shall not include bad debts or any taxes or fees on Services furnished by Grantee imposed upon Subscribers by any municipality, state or other governmental unit, including the FCC regulatory fee, credits, refunds and any amounts collected from Subscribers for deposits, PEG fees or PEG support. City and Grantee acknowledge and agree that Grantee will maintain its books and records in accordance with generally accepted accounting principles (GAAP).

(n) “Installation” means any connection of the System from feeder cable to the point of connection including Standard Installations and custom Installations with the Subscriber Converter or other terminal equipment.

(o) “Normal Business Hours” means those hours during which most similar businesses in City are open to serve customers. In all cases, “Normal Business Hours” must include some evening hours, at least one (1) night per week and/or some weekend hours.

(p) “Normal Operating Conditions” means those Service conditions which are within the control of Grantee. Those conditions which are not within the control of Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather

conditions. Those conditions which are ordinarily within the control of Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System. Normal Operating Conditions as defined herein shall not be inconsistent with the definition set forth in 47 C.F.R. § 76.309.

(q) “Other Programming Service” means information that a cable operator makes available to all Subscribers generally. Other Programming Services as defined herein shall not be inconsistent with the definition set forth in 47 U.S.C. § 522 (14).

(r) “PEG” means public, educational and governmental. Reference to “access channels” shall mean “PEG access channels.”

(s) “Person” is any person, firm, partnership, association, corporation, company, limited liability entity, excluding the City, or other legal entity.

(t) “Service Area” or “Franchise Area” means the entire geographic area within the City as it is now constituted or may in the future be constituted.

(u) “Service Interruption” means the loss of picture or sound on one (1) or more Cable Channels. Service Interruption as defined herein shall not be inconsistent with the definition set forth in 47 C.F.R. § 76.309.

(v) “Standard Installation” means any residential or commercial Installation which can be completed using a Drop of one hundred twenty-five (125) feet or less.

(w) “Street” means the surface of and the space above and below any public Street, road, highway, freeway, lane, path, public way, alley, court, sidewalk, boulevard, parkway, drive or any easement or right-of-way now or hereafter held by City. To the extent required by Applicable Law, the term “Street” shall include those rights expressly granted by Minn. Stat. § 238.35 subd. 3 and 47 U.S.C. § 541 (a).

(x) “Subscriber” means any Person who receives broadcast programming distributed by a Cable System and does not further distribute it. Subscriber as defined herein shall not be inconsistent with the definition set forth in 47 C.F.R. § 76.5(ee).

(y) “System” or “Cable System” means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes Video Programming and which is provided to multiple Subscribers within a community, but such term does not include:

- (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations;
- (2) a facility that serves Subscribers without using any public Right-of-Way;
- (3) a facility of common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. § 201 et seq., except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of Video Programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services;
- (4) an open video system that complies with 47 U.S.C. § 573; or
- (5) any facilities of any electric utility used solely for operating its electric utility systems.

Cable System as defined herein shall not be inconsistent with the definition set forth in 47 U.S.C. § 522(7).

- (z) "Video Programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station. Video Programming as defined herein shall not be inconsistent with the definition set forth in 47 U.S.C. § 522(20).

Section 2. Uses Permitted by Grantee. The City hereby grants to Grantee the nonexclusive right to engage in the business of operating and providing a System in the City, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain and retain in, on, over, under, upon, across and along any public Street or highway, such poles, wires, cable, conductors, ducts, conduits, vaults, manholes, amplifiers, Converters, modulators, fiber optic cables, repeaters, appliances, attachments, and other property as may be necessary and appurtenant to the System; and in addition so to use, operate and provide similar facilities or properties rented or leased from other Persons, including, but not limited to, a public utility or other grantee franchised or permitted to do business in the City. No permission or license is given to enter private property without the express consent of the owner or agent in possession thereof except as may be permitted by Applicable Law.

Section 3. Non-Exclusivity of Grant.

- (a) Nothing in this Franchise shall affect the right of the City to grant to any other Person a franchise or right to occupy the Streets, or any part thereof for the erection, Installation, construction, reconstruction, operation, maintenance, dismantling, testing, repair or use of a Cable System within the City.

(b) In the event the City enters into a franchise with any cable operator other than the Grantee to enter into the City's Streets for the purpose of constructing and operating a Cable System or providing Cable Service, the material provisions thereof shall be on terms and conditions no more favorable or less burdensome than those in this Franchise pertaining to: (1) the area served; (2) public, educational or governmental access requirements; or (3) Franchise Fees. Nothing in this paragraph shall prevent the City from imposing additional terms and conditions on any other Person to whom it may grant a franchise.

(c) Notwithstanding any provision to the contrary, if a non-wireless facilities based entity, legally authorized by state or federal law, makes available for purchase by Subscribers or customers "Cable Service" or its functional equivalent (including Video Programming under 47 U.S.C. § 571(a)(3) or § 573) within the Franchise Area without a Franchise or other similar lawful authorization granted by the City, then Grantee or City shall have the right, upon ninety (90) days advance written notice to the other party, to terminate this Franchise and, negotiate a renewal or replacement franchise, license, consent, certificate or other authorization with any appropriate governmental entity. Provided, however, the City may not exercise the option to terminate the Franchise under this provision if such action would deprive the Grantee of authority to continue to provide Cable Services within the City. Nothing herein shall in any way limit or reduce Grantee's right to provide Cable Service in the City under Applicable Laws, nor the City's right to regulate Grantee's provision of Cable Service in the City under Applicable Laws.

(d) Grantee specifically agrees that it shall fulfill its commitment specified in Section 22(b) and (c) even if Grantee should have the right to, or does, terminate under Section 3(c) above.

Section 4. Duration of Franchise. This Franchise shall be for a term of ten (10) years following the date of adoption of this Franchise by the Council, unless said Franchise is terminated prior to its date of expiration by the City in the manner hereinafter provided.

Section 5. Previous Franchises. Upon acceptance by Grantee as required by Section 38 herein, this Franchise shall supersede and replace any previous ordinance or other authorization granting a franchise to Grantee. Ordinance No. 9191 is hereby expressly repealed. This Franchise constitutes the entire agreement between the City and Grantee regarding the subject matter hereof. This Franchise may not be amended without an appropriate written amendment signed by both parties.

Section 6. Payment to the City.

(a) Throughout the term of this Franchise, the Grantee shall pay to the City, within forty-five (45) days of the end of each calendar quarter, five percent (5%) of Grantee's Gross Revenues for the previous quarter. Payment of the Franchise

Fee will be made with an itemization of the Gross Revenues showing the basis for the computation in form and substance substantially the same as Exhibit A attached hereto. City agrees to maintain the confidentiality of Exhibit A, consistent with the requirements of Section 14(a) hereof. In the event that a Franchise Fee payment or other sum due is not received by the City on or before the date due, or is underpaid, Grantee shall pay in addition to the payment, or sum due, interest from the due date at an annual rate equal to the prime interest rate of the primary depository bank in the City plus two percent (2%).

(b) Any payment shall not be construed as a release or as an accord and satisfaction of any claim the City may have for further or additional sums payable under this Franchise, or for the performance of any other obligation hereunder. In the event the City should conduct a review of Grantee's books and records pursuant to Section 14 of this Franchise and such review indicates a Franchise Fee underpayment of ten percent (10%) or more, the Grantee shall assume all reasonable documented out-of-pocket costs of such audit, and pay same upon demand by the City.

Section 7. Limitations of Franchise.

(a) This Franchise shall be nonexclusive and complies with franchise standards contained in Minnesota Statutes, Chapter 238.

(b) No privilege or exemption shall be granted or conferred by the Franchise granted hereunder except those specifically prescribed herein.

(c) Any privilege claimed under this Franchise by the Grantee in any Street, or other public property, shall be subordinate to any prior lawful occupancy of the Streets, or other public property.

(d) Any Franchise shall be a privilege to be held in personal trust by the Grantee. It cannot in any event be sold, transferred, leased, assigned or disposed of, in whole or in part, either by forced or involuntary sale, merger, consolidation, or otherwise, without prior consent of the Council expressed by resolution, and then only under such conditions as may be therein prescribed. The said consent of the City may not be arbitrarily refused provided, however, the proposed assignee must show financial and technical responsibility and any new grantee must agree to comply with all provisions of this Franchise; and provided, further, that no such consent shall be required for a transfer in trust, mortgage or other hypothecation as a whole, to secure an indebtedness. The provisions of 47 U.S.C. §533 and §537 and Minn. Stat. § 238.083 shall apply to all such transactions. The inclusion of new or different general partners in the partnership shall be deemed a partial transfer or sale of the Franchise.

(e) Time shall be of the essence of this Franchise. The Grantee shall not be relieved of its obligation to comply promptly with any of the provisions of this

Franchise or by any failure of the City to enforce prompt compliance.

(f) Any right or power in, or duty impressed upon any officer, employee, department, or board of the City shall be subject to delegation or transfer by the City to any other officer, employee, department or board of the City or to a nonprofit corporation.

(g) Any recourse the Grantee may have against the City for any loss, cost, expense or damage arising out of any provisions or requirements, of this Franchise, or its enforcement shall be consistent with the limitations of franchising authority liability provided for in the Cable Communications Policy Act of 1984, as amended.

(h) This Franchise shall not relieve the Grantee of any obligation involved in obtaining pole space from any department of the City, utility company or from others maintaining poles in Streets.

(i) The Grantee and the City agree that each of them will conform to Applicable Laws upon their respective effective dates or when compliance is required by the law, whichever is later.

Section 8. Location of Grantee's Properties.

(a) Any poles, wires, cable lines, conduits or other properties of the Grantee to be constructed or installed in Streets shall be so constructed or installed only at such locations and in such manner as shall be approved by the City engineer, acting in the exercise of his reasonable discretion.

(b) The Grantee shall not install or erect any facilities or apparatus on public property or Streets within the City (except those installed or erected upon public utility facilities now existing) without written approval of the City engineer.

(c) In those areas and portions of the City where both the transmission and distribution facilities of the public utility providing telephone service and those of the utility providing electric service are underground, or hereafter may be placed underground, then the Grantee shall likewise construct, operate and maintain all of its transmission and, distribution facilities underground. Amplifiers in Grantee's transmission and distribution lines and other equipment that may be unreasonably costly or adversely affected by underground placement may be in metal or concrete pedestals or vaults upon the surface of the ground.

(d) Where poles or other wire-holding structures already exist for use in serving the City are available for use by the Grantee, but it does not make arrangements for such use, the City engineer may require the Grantee to use such poles and structures if it determines that the public convenience would be enhanced thereby and the terms of the use available to the Grantee are just and

reasonable.

Section 9. City Rights in Franchise.

- (a) The right is hereby reserved to the City to adopt, in addition to the provisions contained herein and in existing applicable ordinances as of the effective date, such additional regulations of general applicability as it shall find necessary in the exercise of its police power; provided that such regulations, by ordinance or otherwise, shall be reasonable and not in conflict with the rights herein granted or any preemptive state or federal law.
- (b) The City shall, upon request, have the right to inspect the books, records, maps, plans and other like materials of the Grantee related to Franchise responsibilities during Normal Business Hours as provided herein, for the purposes of Franchise administration.
- (c) The City shall have the right, during the life of this Franchise, to install and maintain free of charge upon the poles of the Grantee any wire and pole fixtures necessary for a police alarm system, on the condition that such wire and pole fixtures do not interfere with the System operations of the Grantee.
- (d) The City shall have the right to make inspections of the construction or Installation work performed pursuant to the provisions of this Franchise and make any inspection it shall find necessary to secure compliance with the terms of this Franchise and other pertinent provisions of law.
- (e) At the expiration of the term for which this Franchise is granted and any renewals thereof, or upon its termination and cancellation, as provided for herein, the City shall have the right to require the Grantee to remove at its own expense all portions of the System from all public ways within the City.

Section 10. Change Required by Public Improvements.

- (a) The Grantee shall, at its expense, protect, support, temporarily disconnect, relocate in the same Street, alley or public place, or remove from the Street, alley or public place, any property of the Grantee when required by the City engineer by reason of traffic conditions, public safety, Street vacation, freeway and Street construction, change or establishment of Street grade, installation of sewers, drains, water pipes, power lines, signal lines and tracks or the installation or repair of any other type of structures or improvements by governmental agencies, when acting in a governmental or proprietary capacity.
- (b) To the extent not inconsistent with any other local law, all wires, conduits, cable and other property and facilities of Grantee shall be located, constructed, installed and maintained in compliance with applicable codes. Grantee shall keep and maintain all of its property so as not to unnecessarily interfere with the usual

and customary trade, traffic, or travel upon the Streets and public places of the Franchise Area or endanger the lives or property of any Person.

Section 11. Failure to Perform Street Work. Upon failure of the Grantee to complete any work required by law or by the provisions of this Franchise to be done in any Street within the time prescribed, and to the satisfaction of the City engineer, the City engineer may cause such work to be done, and the Grantee shall pay to the City the cost thereof in the itemized amounts reported by the City engineer to the Grantee within sixty (60) days after receipt of such itemized report.

Section 12. Performance Bond.

(a) The Grantee shall maintain in full force and effect for the term of this Franchise, at Grantee's sole expense, a standard form corporate surety bond to be approved by the City Attorney, which approval shall not be unreasonably withheld, in the amount of Fifty Thousand and No/100 Dollars (\$50,000) ("Performance Bond"). The Performance Bond shall be conditioned upon the Grantee's compliance with all of the terms and provisions of this Franchise. There shall be recoverable jointly and severally from the principle and surety of the Performance Bond any damages or loss suffered by the City as a result of Grantee's failure to comply with the terms and provisions of the Franchise, including the full amount of any compensation, indemnification, or other costs, languages or liabilities, plus a reasonable allowance for attorney's fees and costs, up to the full amount of the Performance Bond. The Performance Bond shall provide that thirty (30) days prior written notice be given to City of any cancellation or material change in the Performance Bond or of Grantee's intention not to renew.

(b) Neither the provisions of this section, any Performance Bond accepted by the City pursuant thereto, nor any damages recovered by the City thereunder, shall be construed to excuse faithful performance by the Grantee, or limit the liability of the Grantee under this Franchise for damages, either to the full amount of the Performance Bond, or otherwise. The City agrees to either return the original bond or sign the necessary documentation to release the bond promptly upon the expiration, termination or transfer of this Franchise.

(c) Notwithstanding any other provision of this Franchise, the City does not waive and specifically reserves any and all rights it may have to pursue all legal and equitable remedies available to it under Applicable Law.

Section 13. Indemnification of the City.

(a) The Grantee shall indemnify the City, its officers and its employees, against all claims, demands, actions, suits and proceedings by Persons including agents or employees of Grantee against all liability to others, and against any loss, cost and expense resulting therefrom including reasonable attorney's fees, arising

out of the exercise or enjoyment of its Franchise, irrespective of the amount of the comprehensive liability insurance policy required hereunder, provided that the City shall give the Grantee written notice of its obligation to indemnify the City within ten (10) business days of receipt of a written claim or action (e.g. summons and complaint or demand letter) pursuant to this section. In the event any such claim arises, the City shall tender the defense thereof to the Grantee and the Grantee shall have the right to defend, settle or compromise any claims arising hereunder and the City shall cooperate fully herein. If the City determines in good faith that its interest cannot be represented by the Grantee, the Grantee shall be excused from any obligation to represent the City. Notwithstanding the foregoing, the Grantee shall not be obligated to indemnify the City for any damages, liability or claims resulting from the willful misconduct or gross negligence of the City or for the City's use of the Cable System, including any PEG Channels.

(b) At all times during the term of this Franchise, the Grantee shall maintain in full force and effect (at its own cost and expense) a commercial general liability insurance policy, including contractual liability coverage in a form satisfactory to the City attorney, protecting against liability for loss or damage for personal injury, death and property damage, occasioned by the operations of Grantee under such Franchise, with minimum liability limits of Two Million and No/100 Dollars (\$2,000,000) per occurrence or combined single limit and Three Million and No/100 Dollars (\$3,000,000) for excess liability coverage. Grantee shall furnish to City a certificate of insurance evidencing such coverage.

(c) Current ISO additional insured endorsement CG 20 10 is not acceptable. If the ISO 20 10 is used, it must be a pre-2004 edition.

(d) The certificate of insurance mentioned in the foregoing paragraph shall name the City, its, officers, boards, commissions, agents and employees, as additional insured and shall contain a provision that a written notice of any cancellation or failure to renew said policy shall be delivered to the City thirty (30) days in advance of the effective date thereof. If proof of such insurance is in the form of a so-called "Accord" form of certificate, the words, "endeavor to" shall be stricken from the notice provisions thereof.

(e) This Franchise shall not be effective unless and until each of the foregoing policies of insurance as required in this section have been delivered to the City.

(f) Nothing in this Franchise shall relieve any Person from liability arising out of the failure to exercise reasonable care to avoid injuring Grantee's facilities while performing any work connected with grading, regrading, or changing the line of any Street or public place or with the construction or reconstruction of any sewer or water system.

Section 14. Inspection of Property and Property Records.

(a) The City shall have the right, upon reasonable notice of not more than thirty (30) days, to inspect and copy, during Normal Business Hours at Grantee's local office, or a location no more than thirty (30) miles from the City Hall, documentation reasonably necessary for the City to monitor Grantee's compliance with this Franchise. Except as specifically set forth in this Franchise, Grantee shall not be required to create reports which are not generated in the normal course of business. Grantee shall not be required to disclose books and records of an affiliate which is not providing Cable Service in the Service Area, nor to provide Subscriber information in violation of Section 631 of the Cable Act. City acknowledges that some of the books or records of Grantee may be classified as confidential and therefore may subject Grantee to a competitive disadvantage if made public. City shall maintain the confidentiality of any and all records provided to it by Grantee that are not required to be made public pursuant to Applicable Laws. The City agrees to treat as confidential any information disclosed by, and clearly marked by, the Grantee as "confidential" or "trade secret" and only disclose it to employees of the City, which may include elected officials, that have a business need to know, or in order to enforce the provisions of this Franchise. No separate "confidentiality agreement" shall be required by Grantee as a condition to said inspection by City employees. Any representatives or agents who are retained by the City and are to be provided access to data marked confidential by the Grantee in connection with an inspection under this Section shall be required to execute a Third Party confidentiality Agreement in form and substance substantially the same as attached in Exhibit D hereto prior to receipt of such confidential data. To the extent it is necessary for City to send employees, agents or representatives to a location more than thirty (30) miles outside of the City to inspect Grantee's books and records, Grantee shall be responsible for all time and travel costs incurred by City representatives resulting from such travel.

(b) Throughout the term of this Franchise, Grantee shall maintain books and records in accordance with normal and accepted bookkeeping and accounting practices for the cable communications industry. City acknowledges that some of the records which may be inspected may be classified as confidential or trade secrets under Applicable Laws and therefore may subject Grantee to competitive disadvantage if made public. City shall therefore maintain the confidentiality of any and all records provided to it by Grantee which are not required to be made public pursuant to the Minnesota Data Practices Act and Applicable Laws. The books and records to be maintained by Grantee shall include, but not be limited to, the following:

- (1) A two (2) year record of all written Subscriber complaints and the action taken;
- (2) A two (2) year record of all Service outages;
- (3) A file of all Subscriber contract forms; and

- (4) Financial records related to Franchise responsibilities.

Section 15. Reports to the City. Grantee shall, upon request, file with the City by April 1 of each year during the term of this Franchise the following information regarding the previous year's operations.

- (a) A copy of each document filed with all federal, state and local agencies not previously filed with City with respect to the ownership and operation of System.
- (b) A copy of its most recent Annual Notice to Subscribers.
- (c) A current copy of its rules and policies.
- (d) A current copy of its Subscriber service contract, if any.
- (e) Results of any performance tests, including those required by the FCC.

Section 16. Picture Quality and Technical Requirements.

- (a) Grantee shall construct and maintain a System that at least meets minimum technical standards or guidelines now or hereafter established by the FCC (47 C.F.R. Subpart K, § 76.601-76.640) relating to Cable Systems; provided, however, that in no event shall the technical standards required to be met by Grantee be less stringent than the FCC standards or guidelines in effect during the term of this Franchise.
- (b) The System shall be designed for and operated on a twenty-four (24) hour a day continuous operation basis. Grantee shall make provisions to ensure, as much as is reasonable, continuous operation of the System.
- (c) Grantee shall test the technical capacity of the System in accordance with FCC standards and as necessary to diagnose problems and to respond to complaints. The results of any tests required by the FCC shall be filed with the City within ten (10) days of a written request for a copy of such tests. Representatives of City may, upon request, be present during testing. The expenses of any tests required by the FCC shall be paid by Grantee.

Section 17. Consumer Service Requirements. Grantee shall maintain a convenient local customer service and bill payment location in the City for matters such as receiving Subscriber payments, handling billing questions, equipment replacement and customer service information. The Grantee shall comply with the standards and requirements for customer service set forth below and shall comply with all applicable regulations relating to customer service obligations, including any amendments to 47 C.F.R. § 76.309 during the term of this Franchise.

(a) Cable System office hours and telephone availability:

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

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

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

(2) Under Normal Operating Conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time under Normal Operating Conditions, measured on a quarterly basis.

(3) The Grantee shall not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

(4) Under Normal Operating Conditions, the customer will receive a busy signal less than three percent (3%) of the time.

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

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

(1) Standard Installations will be performed within seven (7) business days after an order has been placed. "Standard" Installations are those that are located up to one hundred twenty-five (125) feet from the existing distribution system.

(2) Excluding conditions beyond the control of the Grantee, the Grantee will begin working on "Service Interruptions" promptly and in no event later than twenty-four (24) hours after the interruption becomes

known. The Grantee must begin actions to correct other Service problems the next business day after notification of the Service problem.

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

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

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

(c) Communications between Grantee and Subscribers.

(1) Grantee will provide written information on each of the following areas at the time of Installation of Service, at least annually to all Subscribers, and at any time upon request:

(A) Products and Services offered;

(B) Prices and options for programming services and conditions of subscription to programming and other services;

(C) Installation and Service maintenance policies;

(D) Instructions on how to use the Cable Service;

(E) Channel positions of programming carried on the System; and

(F) Billing and complaint procedures, including the address and telephone number of the City's cable office.

Subscribers shall be advised of the procedures for resolution of complaints about the quality of the television signal delivered by the Grantee, including the address of the responsible officer of the City.

(2) Subscribers will be notified of any changes in rates, programming services or Channel positions as soon as possible in writing. Notice must be given to Subscribers a minimum of thirty (30) days in advance of such

changes if the change is within the control of the Grantee. In addition, the Grantee shall notify Subscribers thirty (30) days in advance of any significant changes in the information required by Section 17(c)(1).

(3) In addition to the requirement of subparagraph (2) of this section regarding advance notification to Subscribers of any changes in rates, programming services or Channel positions, Grantee shall give thirty (30) days written notice to both Subscribers and the City before implementing any rate or Service change. Such notice shall state the precise amount of any rate change and briefly explain in readily understandable fashion the cause of the rate change (e.g., inflation, change in external costs or the addition/deletion of Channels). When the change involves the addition or deletion of Channels, each Channel added or deleted must be separately identified. For purposes of the carriage of digital broadcast signals, the Grantee need only identify for Subscribers, the television signal added and not whether that signal may be multiplexed during certain dayparts.

(4) To the extent Grantee is required to provide notice of Service and rate changes to Subscribers, the Grantee may provide such notice using any reasonable written means at its sole discretion.

(5) Notwithstanding any other provision of this section, Grantee shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, Franchise Fee, or any other fee, tax, assessment, or charge of any kind imposed by any federal agency, state, or City on the transaction between the Grantee and the Subscriber.

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

(1) The customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or

(2) The return of the equipment supplied by the Grantee if Service is terminated.

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

(f) Billing:

(1) Consistent with 47 C.F.R. § 76.1619, bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, Basic Cable Service and premium Service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

- (2) In case of a billing dispute, the Grantee must respond to a written complaint from a Subscriber within thirty (30) days.

Grantee shall, upon request, provide City with information which shall describe in detail Grantee's compliance with each and every term and provision of this Section 17.

(g) Subscriber Contracts.

- (1) Grantee shall, upon request, provide the City with any standard form residential Subscriber contract utilized by Grantee. If no such written contract exists, Grantee shall file with the City a document completely and concisely stating the length and terms of the Subscriber contract offered to customers. The length and terms of any Subscriber contract(s) shall be available for public inspection during Normal Business Hours. A list of Grantee's current Subscriber rates and charges for Cable Service shall be maintained on file with City and shall be available for public inspection.

(h) Refund Policy.

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

(i) Late Fees.

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

(j) Disputes

- (1) All Subscribers and members of the general public may direct complaints, regarding Grantee's Service or performance to the chief administrative officer of the City or the chief administrative officer's designee, which may be a board or commission of the City.

Section 18. Emergency Use of Facilities. In the event of fire, disaster or other emergency, Grantee shall make available the System to City during the period of the

emergency for the cablecasting of emergency announcements on government access Channels. Upon notice to Grantee, City may also cut or move any of Grantee's wires, cables, amplifiers, appliances or other component of the System as may be reasonably determined by City in the event of fire, disaster or other emergency. Grantee waives any claim against City arising from City's exercise of these rights.

Section 19. Miscellaneous Provisions.

(a) The Grantee must pay to the City a sum of money sufficient to reimburse it for expenses incurred by it in publishing legal notices and ordinances in connection with the granting of this Franchise, such payment to be made within thirty (30) days after the City shall furnish such Grantee with a written statement of such expense.

(b) The chief administrative officer of the City is responsible for the continuing administration of the Franchise and may delegate any or all Franchise administration duties to any employee, officer or board or commission of the City or to a nonprofit-corporation.

Section 20. Rates.

(a) The City reserves any and all authority to regulate Grantee's Subscriber rates consistent with federal and state law in accordance with rules and regulatory formats set forth in said laws.

(b) Upon request, the Grantee shall file in the office of the City Clerk a complete schedule of all of its fees and charges and shall file an amended schedule of fees and charges at least thirty (30) days before any change in said fees and charges is to take effect. Such schedule shall be available for public inspection during Normal Business Hours.

Section 21. Service to Institutions.

(a) Grantee shall provide free of charge throughout the term of this Franchise, Installation of one (1) network Drop, one (1) cable outlet, and one (1) Converter, if necessary, and the most highly penetrated level of Cable Service (i.e. the equivalent of the Basic and Expanded Basic Service tiers) offered by Grantee, excluding pay-per-view, pay-per-channel (premium) programming, high-speed data services or newly created non-video Cable Services, without charge to the institutions identified on Exhibit B attached hereto and made a part hereof, and such other City buildings where public employees are located and accredited public and private school buildings subsequently designated by City as determined in City's sole discretion. This requirement shall not include any digital tier of services Grantee may offer unless and until such time as Grantee's digital programming reduces the amount of spectrum available for analog programming to less than approximately sixty (60) Channels of analog

programming. Grantee shall be responsible for the costs of extension to subsequently designated institutions for the first two hundred (200) feet as measured from Grantee's nearest active plant. The institution shall pay the net additional Drop or extension costs beyond the two hundred (200) feet.

(b) Additional outlets in any of the locations identified on Exhibit B will be installed by Grantee at the rate card price current for the City of Duluth customers. Alternatively, said institutions may add outlets at their own expense, as long as such Installation meets Grantee's standards and approval which shall not be unreasonably withheld. Grantee shall have three (3) months from the date of City designation of additional accredited schools or public institutions or relocations to complete construction of the Drop and the outlet unless weather or other conditions beyond the control of Grantee requires more time.

(c) The Cable Service provided pursuant to this section shall not be used for commercial purposes and such outlets shall not be located in areas open to the public (i.e. "open display"). The City shall take reasonable precautions to prevent any use of the Grantee's Cable System that results in the inappropriate use thereof or any loss or damage to the Cable System. Grantee shall provide City with reasonable advance written notice if Grantee becomes aware of any open display in violation of this Section 21(c). The City shall hold the Grantee harmless from any and all liability or claims by programmers arising out of the open display of Cable Service in violation of this Section 21(c).

Section 22. Live Broadcast Facilities and Two-Way Network.

(a) Grantee shall, at no cost to City unless otherwise specified herein, provide a return connection to facilitate the exchange of programming, including live cablecasting of programming from those locations identified in Exhibit C, attached hereto and made a part hereof.

(b) The City and Grantee agree that Grantee shall, on or before November 30, 2006, complete all construction work to facilitate a fiber path for live cablecasting from the City Hall/PACT to Grantee's headend.

(c) Within ninety (90) days from the date Grantee receives a written request from City, Grantee shall also construct a fiber path to the remaining locations identified in Exhibit C. Grantee shall not be required to incur in excess of Two Hundred Thousand and No/100 Dollars (\$200,000) to complete the construction of such fiber paths required in this Section 22(c). The City shall have the right to prioritize the locations if the costs are expected to exceed the Two Hundred Thousand and No/100 Dollar (\$200,000) threshold. In the event the actual construction costs are estimated to exceed Two Hundred Thousand and No/100 Dollars (\$200,000), the City shall, at its sole option, have the right to cover those costs which exceed Two Hundred Thousand and No/100 Dollar (\$200,000), except that the City shall not be required to reimburse the Grantee for the receiver

set forth below. Before any construction is undertaken, both the City and Grantee agree to share relevant information including work orders and bid specifications and agree to work cooperatively to attempt to reduce the total costs for such construction and minimize the subsequent impact on Subscriber rates. The City shall be responsible for all terminal equipment at City Hall/PACT and at each location listed in Exhibit C, including any optical transmitters within the City facilities and all necessary production equipment the City may choose to utilize. Grantee shall be responsible to construct, operate and maintain the fiber paths from the specified locations (City Hall/PACT and the locations listed in Exhibit C) back to Grantee's headend, including any headend equipment necessary to permit the signals transmitted from the City to be cablecast to Subscribers on the System. Grantee initially estimates that a receiver will be required at its headend facility. Said receiver will be the Grantee's obligation to purchase at its cost. The cost of the receiver shall not be included in the Two Hundred Thousand and No/100 Dollars (\$200,000) threshold. The Grantee shall have all rights under federal law to pass through and collect from Subscribers its costs associated with providing the two-way capability as well as any headend equipment which Grantee may be required to purchase to permit the transmission of the signal on to the System for viewing by Subscribers. Any and all payments or costs incurred by Grantee to provide the two-way live cablecasting requirements specified in this Section 22 shall not be deemed "Franchise Fees" within the meaning of Section 622 of the Cable Act (47 U.S.C. § 542). Any recovery by Grantee shall be in addition to and not by way of offset against the PEG Capital Access Fee established by Section 28 of this Franchise.

Section 23. City-wide Service. Grantee's Cable System and its Services shall be made available in every part of the City except in those areas, if any, where it appears that there are not sufficient potential users to make the Installation and operation of the System economically feasible. A showing that the Service Area exceeds twenty-five (25) dwelling units per cable mile shall be prima facie evidence of economic feasibility. Grantee shall not discriminate between Persons or areas; and its Service shall be equally available throughout the City.

Section 24. Rights of Individuals. Grantee shall at all times comply with the requirements of 47 U.S.C. § 551. In addition, as required by Minn. Stat. § 238.084(s), no signals of a class IV cable communications channel may be transmitted from a Subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the Subscriber. The request for permission must be contained in a separate document with a prominent statement that the Subscriber is authorizing the permission in full knowledge of its provisions. The written permission must be for a limited period of time not to exceed one (1) year, which is renewable at the option of the Subscriber. No penalty may be invoked for a Subscriber's failure to provide or renew the authorization. The authorization is revocable at any time by the Subscriber without penalty of any kind.

Section 25. Channel Capacity. Grantee shall maintain for the term of this Franchise

a System providing a minimum of 750 MHz capacity. The Cable System shall be maintained to meet or exceed the requirements of the current additions of the National Electrical Code (NFPA 70) and the National Electrical Safety Code (ANSI C2). In all matters requiring interpretation of either of these codes, the City's interpretation shall control over all other sources and interpretations. The City's interpretation shall be consistently applied with respect to other occupants of the Streets.

Section 26. Interconnection. Grantee shall, at no cost to City, maintain an interconnection with the Superior, Wisconsin cable system to facilitate the two-way distribution of PEG access programming. The City shall, in its sole discretion, determine what type of PEG access programming, if any, from Superior will be cablecast on the City's PEG Channels. City or its designee shall be responsible for equipment required to enable programming to be cablecast. Grantee agrees not to assess any fees or costs to City or its designee to locate any required equipment at Grantee's headend or other location in the System as may be technically required.

Section 27. Periodic Review and Renegotiation.

(a) City or Grantee may require evaluation sessions at any time during the term of this Franchise, upon thirty (30) days written notice to the other party, and no more frequently than once every three (3) years unless mutually agreed upon.

(b) Topics which may be discussed at any evaluation session may include, but are not limited to, application of new technologies such as video on demand in lieu of PEG access Channels, System performance, programming offered, utilization of PEG access Channels and the quality of PEG access programming, municipal uses of cable, customer complaints, potential amendments to this Franchise, the impact of legislative changes, judicial rulings, and/or FCC rulings, line extension policies and any other topics City or Grantee deems relevant.

(c) As part of any periodic evaluation proceeding the City shall have the right to visit and/or inspect the Grantee's headend facility, customer service center and any other facilities of Grantee whether or not located in the City to the extent such facilities are directly related to Grantee's ability to provide Cable Services to the City.

(d) As a result of a periodic review or evaluation session, Grantee and City may agree to meet and undertake good faith efforts to reach agreement on changes and modifications to the terms and conditions of the Franchise which are both economically and technically feasible as measured over the remaining life of the Franchise.

Section 28. Special Channel and Access Requirements.

(a) Grantee shall provide, at no cost to the City or Persons who submit programming, five (5) Channels for PEG access use. Three (3) Channels shall be designated for public access programming, one (1) Channel shall be designated for educational access programming, and one (1) Channel shall be designated for

government access programming. Whenever an access Channel or Channels within the specially designated categories identified above (i.e. public access, educational access or governmental access) is in use during eighty percent (80%) of the weekdays (Monday - Friday), for eighty percent (80%) of the time during a consecutive three (3) hour period for six (6) weeks running, and there is a demand for use of an additional Channel for the same purpose, then at the request of the City, Grantee shall have six (6) months in which to provide a new specially designated access Channel for the same purpose at no additional charge to Subscribers; provided that, the provision of the additional Channel or Channels does not require the Cable System to install Converters. The City shall develop, subject to approval of the Grantee, reasonable rules and regulations for determining percentage of access Channel utilization and reasonable rules for replay of programming on the public access Channels. For purposes of this subsection, the term "in use" shall mean live cablecasts and one (1) repeat of each such live program, playback of prerecorded programs and one (1) repeat of each such prerecorded program, plus periods of time less than fourteen (14) minutes between cablecasts of either live or prerecorded programs.

(b) Studio and playback facilities for the public access Channels shall be located in a public building provided by the City. The City shall, directly or through its designee, administer the PEG access Channels. It is anticipated that a nonprofit PEG access corporation will administer by contract with the City the PEG access Channels. The City shall maintain rules and regulations pertaining to the administration of the PEG access Channels. In preparing such rules:

- (1) City shall provide an equal opportunity for use of access service;
- (2) The hours of operation of the access studio shall be established by City and shall not be modified without approval of City;
- (3) The City or the City's designee shall schedule all PEG programming on the PEG Channels;
- (4) No paid commercial programming or commercial material shall be run on any PEG Channel. Program material to be distributed on PEG access Channels shall contain no advertising or commercial content for which consideration is received by City. Notwithstanding the foregoing, Grantee and City agree that City or the producer or distributor of such programming may include brief acknowledgments for Persons which sponsor or underwrite access programming in a manner substantially similar to the sponsorship information currently provided on the Public Broadcasting System (PBS); and
- (5) No charges shall be made for Channel time or playback of prerecorded programming on the specially designated noncommercial access Channels. Personnel, equipment and production costs may be assessed for live studio presentations exceeding five (5) minutes in length. Charges for those production costs and fees must be consistent with the goal of affording the public a low cost means of television access. Access facilities, equipment and/or Channel time will be made available by the

City or its designee to the general public or any group or individual resident for the production and/or cablecasting of noncommercial programming on a first come, nondiscriminatory basis.

(c) Grantee will comply, at a minimum, with the following requirements regarding access Channels:

(1) Grantee shall provide City and all Subscribers with at least sixty (60) days prior written notice of any relocation of any PEG access Channel to a different Channel number. In the event any PEG access Channel(s) is relocated, Grantee shall reimburse City up to Five Thousand and No/100 Dollars (\$5,000.00) for the actual costs associated with such move including but not limited to change of letterhead, promotion of new Channel location and promotional spots for the new location and/or newspaper advertisements. Grantee shall also inform Subscribers of the new Channel location through bill messages and/or bill inserts. The VHF spectrum must be used for one of the PEG access Channels.

(2) Grantee shall continue to maintain the Channel capacity available for the noncommercial PEG access Channels throughout the term of the Franchise and shall provide and maintain its System equipment and PEG access Channels so as to transmit signals on such Channels in accordance with the minimum technical standards required by this Franchise. Grantee's responsibility for signal quality begins at the PEG access Channels' modulators output, ending at the Subscriber's ground block.

(3) All access Channels shall be transmitted to Subscribers on the Basic Cable Service tier. The technical quality of all access Channels under Grantee's control shall be at least equal to the same FCC required technical standards to ensure the same quality as the Channels used by Grantee to retransmit local off-the-air broadcast television stations which are affiliates of the major national broadcast networks. Grantee shall insure that there is no material degradation in the signal that is received by Grantee for distribution by Grantee from the City over the Cable System.

(4) The Grantee shall provide the PEG Channels as part of the Basic Cable Service tier provided to any Subscriber, at no additional charge beyond the price for the Basic Cable Service tier, and so that the PEG Channels are viewable by the Subscriber without the need for additional equipment beyond that required to receive the Basic Cable Service tier. If Channels are selected through a menu system, the PEG Channels shall be displayed as prominently as commercial programming choices offered by Grantee.

(5) At such time as the Grantee converts its Basic Cable Service tier from an analog to a digital format, the City's PEG Channels will continue to be carried along with the programming on the Basic Cable Service tier. Such PEG Channels shall be accessed by Subscribers through use of standard digital equipment compatible with Grantee's Cable System.

(6) Grantee shall collect, on behalf of City, a per Subscriber fee of thirty-seven cents (37¢) per month, solely to fund PEG access capital related expenditures (hereinafter "PEG Capital Access Fee"). This PEG Capital Access Fee shall be paid by Grantee to City in the same manner as Franchise Fee payments, pursuant to Section 6 herein. Any and all payments by Grantee to City in support of PEG access programming shall not be deemed "Franchise Fees" within the meaning of Section 622 of the Cable Act (47 U.S.C. Section 542).

(7) If City extends the term of this Franchise and such extension is accepted by Grantee, Grantee shall continue to collect during the term of the extension, on behalf of the City, the Access Fee referenced in paragraph (8) above.

Section 29. Notice and Default.

(a) City shall give Grantee written notice specifying in detail the nature of any default if City determines that Grantee has:

(1) Violated any material provision of this Franchise or the acceptance hereof, or any Applicable Law directly relating to its operations under the Franchise and not in conflict with this Franchise;

(2) Attempted to evade any provision of this Franchise or the acceptance hereof;

(3) Practiced any fraud or deceit upon City or Subscribers; or

(4) Made a material misrepresentation of fact in the application for or negotiation of the Franchise.

(b) If Grantee fails to cure such default within thirty (30) days after the giving of such notice, or if such default is of such a character as to require more than thirty (30) days within which to cure the same, and Grantee fails to commence to cure the same within said thirty (30) day period and thereafter fails to use reasonable diligence, in City's reasonable opinion, to cure such default as soon as possible, then and in any event, such default shall be a substantial breach of this Franchise and City, at its option may elect to either cure the default or terminate and cancel this Franchise and all rights and privileges of this Franchise as follows:

(1) If the default interferes with the City or public use of a Street, the City may cure any default and all reasonable sums expended by City, including attorneys' fees incurred in curing such default, whether suit be brought or not, shall be paid by Grantee to City, upon demand, and failure to so pay upon demand likewise may be deemed by City to be a default under this Franchise;

(2) City may place the issue of revocation and termination of the Franchise before the Council at a regular or special meeting of the City Council. If City decides there is cause or reason to terminate, the following procedure shall be followed:

(A) City shall provide Grantee with a written notice of City's intention to terminate the Franchise and specify in detail the reason or cause for proposed termination. City shall allow Grantee a minimum of thirty (30) days subsequent to receipt of the notice in which to correct the default;

(B) Grantee shall be provided the right to a public hearing affording due process which shall include an opportunity to be heard and present evidence prior to any decision to terminate this Franchise;

(C) In the event that City determines to terminate this Franchise, the Grantee shall have a period of thirty (30) days, beginning on the date next following written notice to Grantee of such decision, within which to file an appeal with a court of competent jurisdiction. During such thirty (30) day period and if an appeal is taken, the Franchise shall remain in full force and effect, unless the term thereof sooner expires;

(D) If a court of competent jurisdiction approves the action of City, the Franchise shall terminate immediately unless the judgment is appealed to an appellate court. If a court of competent jurisdiction disapproves of the action of City, the Franchise shall remain in full force and effect for the full term hereof unless the judgment is reversed on appeal or unless the Franchise is sooner terminated in accordance with the provisions hereof, or Applicable Law. The Franchise shall remain in effect during the duration of pending appeals.

Section 30. Foreclosure. Upon the foreclosure or other judicial sale of all or part of the System, Grantee shall notify City of such fact and such notification shall be treated as a notification that a change in control of Grantee has taken place, and the provisions of this Franchise governing the consent to transfer or change in ownership shall apply.

Section 31. Receivership. City shall have the right to cancel this Franchise one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of Grantee, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:

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

Section 36. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Franchise or any part thereof, is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Franchise, or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional.

Section 37. Force Majeure. Neither party shall be liable for any failure of performance hereunder due to causes beyond its reasonable control including but not limited to acts of God, strikes, natural disasters, civil disturbances, power outages, telephone network, and severe or unusual weather conditions.

Section 38. Effective Date/Acceptance. Before this Franchise shall be in force or take effect, the Grantee shall accept the same by filing with the City Clerk of the City its written acceptance thereof within forty-five (45) days from the adoption of this Franchise by the Council, consenting to the terms and conditions hereof, and agreeing to perform all acts and things required and agreed to be done by the Grantee. This Franchise shall expire on May 8, 2016, unless extended by the mutual agreement of the parties.

Section 39. City Charter.

- (a) To the extent consistent with Applicable Laws, the Grantee shall be subject to the following provisions of the City Charter. Nothing in this section shall be deemed to constitute a waiver by Grantee of any rights Grantee may have under the Federal or State Constitutions or Applicable Laws.
- (b) The Grantee shall be subject to, and will perform on its part all of the terms of Sections 83, 85 and 86 of the Charter of the City.
- (c) The Grantee will comply with all of the terms of Section 84 of the Charter of the City, and will for failure to do so, pay the penalty prescribed therein; and if such failure continues for a period of sixty (60) days, will upon demand of the City Council, surrender the Franchise to the City.
- (d) The City Council of the City shall have the right:
 - (1) To require reasonable extensions of any public service system;
 - (2) To make such rules and regulations as may be required to secure adequate and proper service, and to provide sufficient accommodations for the public.

Section 40. Publication. Pursuant to Section 82 of the City Charter, this Franchise shall be published verbatim in the official paper of the City once a week for four (4) successive weeks after its passage, and shall take effect thirty (30) days from and after its last publication and after written acceptance thereof by the Grantee.

Adopted by the City Council on May 8, 2006.

Effective date _____, 2006.

**Exhibit A
Franchise Fee Payment Worksheet**

TRADE SECRET – CONFIDENTIAL

	Month/Year	Month/Year	Month/Year	Total
Basic Cable Service				
Installation Charge				
Bulk Revenue				
Expanded Basic Service				
Pay Service				
Pay-per-view				
Guide Revenue				
Franchise Fee Revenue				
Advertising Revenue				
Home Shopping Revenue				
Digital Services				
Inside Wiring				
Other Revenue				
Equipment Rental				
Processing Fees				
Bad Debt				
REVENUE				
Fee Calculated				

Fee Factor:

5%

Exhibit B
Service to Public and Private Buildings

1.	Duluth City Hall	411 W. 1 st Street
2.	Fire Department Station 1	602 W. 2d Street
3.	Fire Department Station 2	2627 W. Superior Street
4.	Fire Department Station 4	425 W. College Street
5.	Fire Department Station 5	2138 Minnesota Ave.
6.	Fire Department Station 6	1031 N. 51 st Street
7.	Fire Department Station 7	1419 Maple Grove Road
8.	Fire Department Station 8	5830 Grand Ave.
9.	Fire Department Station 10	1106 Commonwealth Ave.
10.	Fire Department Station 11	3501 Woodland Ave.
11.	Joint Law Enforcement Center	2501 Rice Lake Road
12.	St. Louis County board room	417 Federal Building, 515 W. 1 st Street
13.	St. Louis County Heritage & Arts Center	506 W. Michigan Street
14.	Portman Recreation Center	4601 McCulloch Street
15.	Woodland Community Center	3211 Allendale Ave.
16.	Hartley Nature Center	3001 Woodland Ave.
17.	Central Hillside Community Center	12 E. 4 th Street
18.	Duluth Entertainment Convention Center	350 Harbor Drive
19.	Goodfellowship Community Center	1242 88 th Ave. W.
20.	Bayfront Park	South 5 th Ave. W. at RR Street
21.	City Center West (senior center, parks, police, & library)	5830 Grand Ave.
22.	Central Administration Building	215 N. 1 st Ave. E.
23.	Washington Center	310 N. 1 st Ave. W.
24.	Lafayette Square Community Club	3026 Minnesota Ave.
25.	Wade/Wheeler Fields Complex	35 th Ave. W. and Grand Ave.
26.	Garfield Public Works Headquarters & Utilities	411 W. 1 st Street, Room 206
27.	Public Works & Utilities – Engineering	414 W. 1 st Street
28.	Public Works & Utilities – Operations	520 Garfield Ave.
29.	Memorial Recreation Center & Police Sub Station	5215 Grand Ave.
30.	Library – Mount Royal	105 Mt. Royal Shopping Center
31.	Library – main	520 W. Superior Street
32.	Duluth International Airport	4701 Grinden Drive
33.	University of Minnesota-Duluth	1049 University Drive
34.	College of St. Scholastica	1200 Kenwood Ave.
35.	Duluth Technical College	2101 Trinity Road
36.	Duluth Community College	1309 Rice Lake Road
37.	Bay View Elementary	8708 Vinland
38.	Congdon Park Elementary	3116 E. Superior Street
39.	Grant Magnet Elementary	1027 N. 8 th Ave E.
40.	Homecroft Elementary	4784 Howard Gnesen Road
41.	Laura MacArthur Elementary	727 Central Ave.

42.	Lester Park Elementary	315 N. 51 st Street
43.	Lincoln Park Elementary	2427 W. 4 th Street
44.	Lowell Music Magnet Elementary	2000 Rice Lake Road
45.	Miller-Dwan Adoc	215 N. 1 st Ave. E.
46.	Nettleton Magnet Elementary	108 E. 6 th Street
47.	Northwood School	714 ½ W. College Street
48.	Piedmont Elementary	2827 Chambersburg Road
49.	Rockridge Elementary	4849 Ivanhoe Street
50.	Stowe Elementary	715 101 st Ave W.
51.	Chisholm House Program	110 West Redwing Street
52.	Morgan Park Middle School	1243 88 th Ave. W.
53.	North Star Middle Alp	110 West Redwing Street
54.	Ordean Middle School	301 N. 40 th Ave. E.
55.	Woodland Hills Academy	110 West Redwing Street
56.	Woodland Middle School	210 Clover Street
57.	Alternative Programs	215 N. 1 st Ave. E.
58.	Central Secondary	800 E. Central Entrance
59.	Denfeld Senior High School	4405 W. 4 th Street
60.	Duluth Alc	2 E. 2d Street
61.	East Senior High School	2900 E. 4 th Street
62.	Northwood West High School	4000 W. 9 th Street
63.	Edison Charter School	1450 Kenwood Ave.
64.	Harbor City International Charter School	332 W. Michigan Street
65.	Raleigh Primary/Elementary Academy	5905 Raleigh Street
66.	Washburn Junior Academy	201 W. St. Andrews Street
67.	Holy Rosary School	2802 E. 4 th Street
68.	Lakeview Christian Academy	155 W. Central Entrance
69.	Montessori School of Duluth	313 Mygatt Ave.
70.	St. James Elementary School	715 N. 57 th Ave. W.
71.	St. John Elementary School	1 W. Chisholm Street
72.	St. Michael's Lakeside School	4628 Pitt Street
73.	Summit School	1600 N. 8 th Ave. E.
74.	Arrowhead Juvenile Center	1418 Arlington

Exhibit C
Additional Two-Way Connections to Public Institutions

1. City Center West Community Center (senior center, parks, police, fire & library)
2. Library – main
3. Duluth Entertainment Convention Center Harborside & Lake Superior Ballrooms
4. Bayfront Park

Exhibit D
Third Party Confidentiality

In connection with the work that **[individual and/or company name]** _____ is performing for the City of Duluth, Minnesota relating to the review of records held by Charter Communications (“Charter”) with respect to Charter’s Franchise with the City, **[individual and/or company name]** _____ is to be given access to certain material of Charter that is marked confidential or trade secret and which is to be treated as “not public data” or “nonpublic data” under the Government Data Practices Act. _____ **[individual and/or company name]** agrees that:

- it will maintain the confidentiality of such information to the same degree as if it were an employee of the City of Duluth;
- it will not reproduce, disclose, distribute or communicate such information to any Person other than the City of Duluth, except as specifically authorized and required by the City of Duluth, in the performance of its duties on behalf of the City; and
- it will return any information designated as confidential, including copies of such information, to the Grantee upon the completion of the duties it has been retained to perform.

_____ **[individual and/or company name]** has read this Agreement and agrees to comply with and be bound by its terms.

Signed: _____

Name: _____

Title: _____

Date: _____