

CHAPTER 13 FRANCHISES

Section 1300 Electric Franchise

1300.01 Grant of Franchise. The City of Silver Bay grants to Minnesota Power & Light Company, its successors and assigns, (MPL) the right to construct and maintain an Electric Distribution and Transmission System within the City.

1300.02 Authority. The City further grants to MPL the right to enter upon and construct, operate and maintain over, upon, or under, the streets, sidewalks, boulevards, alleys, highways, easements and public grounds of the City, poles, wires, conductors, lines, cables, insulators, communication lines, bases, crossarms, braces, lamps, conduits, underground cables, transformers, with other usual appurtenances and appliances for transmitting and distributing electric power and energy and for other compatible uses and applications including data, information, telecommunications, electric load dispatch and control.

1300.03 Time. The grant of this franchise shall remain in effect for a period of fifteen (15) years from and after passage of this Chapter of the City Code.

1300.04 Specifications. All facilities described above shall be constructed and maintained by MPL in a safe and secure manner so as not to unnecessarily obstruct or interfere with the public use of the streets, sidewalks, boulevards, alleys, highways, easements and public grounds, and subject to the reasonable regulations of the City.

1300.05 Clearances. In order to provide for the safe movement of buildings or other objects that may impinge on MPL transmission or distribution lines, clearance for the moving of buildings and other objects shall be made within a reasonable period of time by MPL when permission to move through the streets is given to anyone by the City or other governmental regulatory agencies. The person granted permission to move the building or other objects shall pay MPL's cost of providing clearance for movement.

1300.06 Maintenance.

Subd. 1 Notice Prior to Work. MPL shall not alter, dig or excavate in any right-of-way, street, sidewalk, boulevard or public ground without first giving twenty-four (24) hours advance notice to the Street Superintendent.

Subd. 2 Restoration and Repair. MPL shall, upon completion of any construction or work, restore all right-of-ways, streets, sidewalks, boulevards, highways, easements and public grounds to the same condition that existed before the commencement of work, within the time limit specified by the Street Superintendent.

Subd. 3 Standards. MPL shall perform the repairs and restoration according to standards specified by the Street Superintendent.

Subd. 4 Failure to Restore or Repair. If MPL refuses or fails to remove any obstruction or repair or restore the work area, the City may remove the obstructions and do the restoration and repair, and charge the cost to MPL.

1300.07. Indemnification. The City shall not be liable or responsible for any accident or damage that may occur in the construction, operation and maintenance by MPL of its lines and appurtenances unless caused by the City. The acceptance of this Section shall be deemed an agreement on the part of the MPL to indemnify the City and hold the City harmless against any and all liability, loss, damage or expense which may accrue to the City by reason of the neglect, default or misconduct of MPL in the construction, operation and maintenance of its facilities.

1300.08 Non-exclusive. The rights and privileges granted to MPL are not exclusive, and the City expressly reserves the right to grant rights and privileges to other persons for the use of streets, sidewalks, boulevards, alleys, highways, easements and public grounds of the City.

1300.09 Services Provided. In consideration for the grant of this franchise and for the right to use the streets, sidewalks, boulevards, alleys, highways, easements and public grounds, MPL shall furnish twenty-four (24) hour, continuous electric services to consumers in the City, including the City, unless prevented by causes not within its reasonable control, pursuant to the laws of the State of Minnesota and the rates, rules and regulations established by MPL and/or the Minnesota Public Utilities Commission.

1300.10 Cancellation. This Section supersedes and cancels any prior franchise granted to MPL, but shall not affect installations or facilities already in place.

1300.11 Applicability. The rights of MPL hereunder are in all respects subject to the laws and regulations of the State of Minnesota; provided, however, that if any of the provisions of this Section are made inapplicable to or declared unenforceable against public electric utilities because of State legislation or judicial decision, such provision shall no longer be deemed to be a part of this Section.

1300.12 Acceptance. This Section shall be void in all respects unless MPL shall file written notice with the City Administrator accepting the provisions of this Section. When so accepted, this Section shall constitute a contract between the City and MPL.

Section 1310 Gas Franchise

1310.01 Grant of Franchise. The City of Silver Bay grants to Northern Minnesota Utilities, a Division of UtiliCorp United, Inc., a Delaware Corporation, its lessees, successors and assigns, (NMU) the right to manufacture, import, transport, sell and distribute gas for heating, illuminating and other purposes in the City

1310.02 Authority. The City further grants to NMU the following rights: to enter upon and to construct, operate and maintain in, upon, or under, the right-of-ways, streets, sidewalks, boulevards, alleys, highways, easements and public grounds of the City; to establish the necessary facilities and equipment, and to maintain a distribution facility, service pipes and other appurtenances necessary to the distribution, and the sale of gas whether natural, artificial or mixed; and, to do all things which are reasonable, necessary or customary in the accomplishment of this objective.

1310.03 Term. The grant of this franchise shall remain in effect for a period of fifteen (15) years from and after the passage of this Code.

1310.04 Maintenance. All facilities described above shall be constructed and maintained by NMU in a safe and secure manner so as not to unnecessarily interfere with or obstruct the public use of the right-of-ways, streets, sidewalks, boulevards, alleys, highways, easements and public grounds, and which shall at all times be

subject to reasonable regulations of the City.

Subd. 1 Notice Prior to Work. NMU shall not alter, dig or excavate in any area described above, except in an emergency, without first giving twenty-four (24) hours advance notice to the Street Superintendent or designee of the City.

Subd. 2 Restoration and Repair. NMU shall upon the completion of any construction or repair for the purpose of laying, placing or repairing its gas mains or service pipes or lines, restore and repair all right-of-ways, streets, sidewalks, boulevards, alleys, highways, easements and public grounds of the City to the same or better order and condition as they were before the excavation was made as is reasonably possible. NMU shall maintain, repair and keep in good condition the area worked in for a period of twelve (12) months from the time of closing the excavation or making repairs in the above referred to areas.

Subd. 3 Notice After Completion. NMU shall upon completion of the work referred to in Subd. 2 above immediately give notice of the completion to the Street Superintendent or designee.

Subd. 4 Failure to Restore or Repair. If, after Notice to do so, NMU refuses or fails to remove any obstruction or restore or repair any work area, the City may remove the obstructions and do the restoration or repair and charge the cost to NMU.

1310.05 Indemnification. The City shall not be liable or responsible for any accident or damage or any claims that may occur in the construction, operation and maintenance by NMU of its facilities.

NMU shall indemnify, keep and hold the City free and harmless from liability on account of injury or damage to persons or property growing out of the construction, maintenance, repair or operation of its property. In the event that, as a result of construction, maintenance, repair or operation by NMU of its facilities, suit shall be brought against the City, either independently or jointly with NMU, upon notice to it by the City, NMU shall assume and take over the defense of any such suit, all at the cost and expense of NMU, and in the event of a final judgment being obtained against the City, whether the latter be sued independently or jointly with NMU, NMU shall pay such judgment, together with all costs and expenses occasioned thereby, and hold the City free and harmless therefrom.

1310.06 Standards of Service. In consideration for the grant of this franchise and the right to use the right-of-ways, streets, boulevards, alleys, highways, easements and public grounds, NMU shall furnish twenty-four (24) hour, continuous gas service to consumers in the City, including the City, unless prevented by causes not within its reasonable control, pursuant to the laws of the State of Minnesota and the rates, rules and regulations established by the Minnesota Public Utilities Commission. NMU shall not be liable to the City or its inhabitants by reason of the failure of the NMU to deliver, or of the City or a customer to receive natural gas as a result of acts of God or the public enemy, inability of pipe line supplier to furnish an adequate supply due to an emergency satisfactorily explained to the City in writing, an order or decision of a public regulatory body or other acts beyond the control of the party affected. NMU shall have the right to contract for the sale of gas for industrial use

on an interruptible basis, requiring the customer to have standby equipment for use upon notice by NMU.

NMU's rules, regulations schedules or contracts for curtailing interruptible gas service shall be uniform as applied to each class of interruptible customers. If service is temporarily suspended because of any of the reasons set forth above, occurring through no fault or negligent act on the part of NMU, such suspension shall not be made the basis of any action or proceeding to terminate this franchise. The quality of gas sold in the City when supplied by the pipe line shall be the same as that sold to NMU by the natural gas company supplying such gas. If for any reason the pipe line company shall be prevented from or unable to supply or provide gas to NMU after NMU shall have begun the distribution and sale of natural gas in the City, then and in that event NMU may substitute artificial gas under the terms of this franchise upon the condition that NMU pay the expenses of any changeovers or modification of the burner in appliances, including heating units being serviced and supplied at that date by NMU within the City.

1310.07 Extensions of Service. NMU shall make such reasonable extension of its mains from time to time as may be necessary, provided, however, that NMU shall not be required to make any extension of its mains for the purpose of serving any new customer or consumers which shall necessitate the installation of more than one hundred (100) feet of main for each consumer to be served, nor where the estimated revenue to be derived from serving such new consumer or consumers is insufficient

to show an adequate return upon the total investment required to serve such new consumer or consumers.

1310.08 Forfeiture. If NMU shall be in default in the performance of any of the material terms and conditions of this Section and shall continue in default for more than ninety (90) days after receiving notice of default, the City may terminate the franchise. The notice of default shall be in writing and shall specify the provisions of this Section in the performance of which it is claimed that NMU is in default.

1310.09 Cancellation. This Section supersedes and cancels any prior franchise granted to NMU but shall not affect installations or facilities already in place.

1310.10 Non-exclusive. The rights and privilege hereby granted are not exclusive. The City expressly reserves the right to grant rights and privileges to other persons for the use of the streets, sidewalks, boulevards, alleys, highways, easements or public grounds.

1310.11 Applicability The rights of NMU hereunder are in all respects subject to the laws and regulations of the State of Minnesota. If any of the provisions of this Section are made inapplicable to or declared unenforceable against public gas utilities because of state legislation or judicial decision, such provisions shall no longer be deemed to be a part of this Section.

1310.12 Acceptance. This Section shall be void in all respects unless NMU shall file written notice to the City Administrator accepting the provisions of this Section. When so accepted, this Section shall constitute a contract between the City and NMU.

Section 1320 Cable Franchise

1320.01 Grant of Franchise. The City of Silver Bay (City) grants to Triax Midwest Associates, L.P., its successors and assigns, (Triax) to construct, operate and maintain a Cable Television System (System) in the City.

1320.02 Further Grants. The City further grants to Triax the right to enter upon and to construct, operate and maintain in, upon, or under, the right-of-ways, streets, sidewalks, boulevards, alleys, highways, easements and public grounds, to establish the necessary facilities and equipment to operate and maintain a Cable Television System in the City.

1320.03 Statement of Intent and Purpose. The City intends, by the adoption of this Franchise to bring about the development of a Cable Communications System and the continued operation of it. Such a development can contribute significantly to the communication needs and desires of many. Further, the City may achieve better utilization and improvement of public services with the development and operation of a Cable Communication System. Past studies by the City have led the way for organizing a means of procuring and securing of a Cable Communications System which is best suited to the City. This has resulted in the preparation and adoption of this Franchise.

1320.04 Findings. In the review of the proposal and application of Triax, and as a result of a public hearing, the City Council makes the following findings:

- A.** Triax'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.** Triax's plans for constructing and operating the System were considered and found adequate and feasible in a full public proceeding after due notice and a reasonable opportunity to be heard;
- C.** The Franchise granted to Triax by the City complies with the existing applicable Minnesota Statutes, federal laws and regulations; and
- D.** The Franchise granted to Triax is nonexclusive.

1320.05 Short Title and Definitions.

Subd. 1 Short Title. This Section shall be known and cited as the Cable Communications Code.

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

- A.** "Basic Service" means any service tier which includes the retransmission of local television broadcast signals.

- B. "City" means City of Silver Bay a municipal corporation, in the State of Minnesota, acting by and through its City Council.**
- C. "Council" means the Silver Bay, Minnesota City Council.**
- D. "Cable Communications System" or "System" means a system of antennas, cables, wires, lines, towers, waveguides, or other conductors, converters, equipment, or facilities located in City and designed and constructed for the purpose of producing, receiving, transmitting, amplifying, or distributing audio, video, and other forms of electronic signals in City. System as defined herein shall not be inconsistent with the definition as set forth in Minnesota Statutes § 238.02, subd. 3 (1990) and 47 U.S.C. § 522(6) (1989).**
- E. "Cable Television Service" or "Cable Service" means the provision of television reception, communications and/or entertainment services for direct or indirect compensation, or as otherwise provided by this ordinance, and distributing the same over a Cable Communications System.**
- F. "Class IV Cable Communications Channel" means a signaling path provided by a Cable Communications System to transmit signals of any type from a Subscriber terminal to another point in the System.**
- G. "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.**
- H. "Triax" means Triax Midwest Associates, L.P., its agents, employees, lawful successors, transferees or assignees, the "Grantee" herein.**

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

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

K. "Gross Revenues" means all compensation received directly by the Grantee from the operation of its System within the City, limited to sums received from Subscribers, including but not limited to Basic Service Subscriber fees, Pay Television fees, Installation and reconnection fees, Converter rental or Lockout Device fees. Gross Revenues shall not include franchise fees or any taxes or fees on services furnished by Grantee imposed directly on any Subscriber or user by any municipality, state, or other governmental unit and collected by Grantee for such governmental unit.

L. "Installation" means the connection of the System from feeder cable to the point of connection, including Standard Installations and custom installations.

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

N. "Pay Television" means the delivery over the System of per-channel or per-program audio-visual signals to Subscribers for a fee or charge, in addition to the charge for Basic Service.

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

P. "Standard Installation" means any residential installation which can be completed using a drop of one hundred fifty (150) feet or less.

Q. "Street" means the surface of, and the space above and below, any public street, road, highway, freeway, lane, alley, court, sidewalk, parkway, or drive, or any easement or right-of-way now or hereafter held by the City which shall, within its proper use and meaning, entitle Grantee to the use thereof for the purpose of installing or transmitting over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other property as may be ordinarily necessary and pertinent to a System.

R. "Subscriber" means any Person who receives Basic and/or Pay Television cable communications services. In the case of multiple office buildings or multiple dwelling units, the "Subscriber" means the lessee, tenant or occupant.

1320.06 Grant of Authority and General Provisions.

Subd. 1 Franchise Required. It shall be unlawful for any Person to construct, operate or maintain a Cable Communications System in the 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 granted pursuant to this Section. It shall also be unlawful for any person to provide Cable Television Service in the City unless such person shall have first obtained and shall currently hold a valid Franchise granted pursuant to the provisions of this Section. All Franchises granted by the City pursuant to this Section shall contain the same substantive terms and conditions.

Subd. 2 Franchise Conditions. This Franchise is granted pursuant to the terms and conditions contained herein. Such terms and conditions shall be subordinate to all applicable provisions of state and federal laws, rules and regulations and the City Code.

Subd. 3 Grant of Nonexclusive Authority.

A. Triax shall have the right and privilege to construct, erect, operate, and maintain, in, upon, along, across, above, over and under the Streets, alleys, public ways and public places now laid out or dedicated and all extensions thereof, and additions thereto in the City, poles, wires, cables, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation in the City of a System as herein defined.

B. Notwithstanding the above grant to use Streets, no Street shall be used by Grantee if City in its sole opinion determines that such use is inconsistent with the terms, conditions, or provisions by which such Street was created or dedicated, or with the present use of the Street.

C. This Franchise shall be nonexclusive. The City reserves the right to grant a similar use of said Streets, alleys, public ways and places, to any Person at any time during the period of this Franchise. Any additional Franchise grants shall be under the same substantive terms and conditions as this Franchise.

D. Grantee shall have the authority to use City easements, public rights-of-way, Streets and other conduits for the distribution of Grantee's System. The City may require all developers of future subdivisions to include cable television services as part of any provisions for utilities to serve such subdivisions.

Subd. 4 Franchise Term. This Franchise shall be in effect until March 25, 2008, unless renewed, revoked or terminated sooner as provided in this Section.

Subd. 5 Previous Franchises. Upon acceptance by Triax as required by Section 1320.16 Subd.2, this Franchise shall supersede and replace any previous Ordinance or Agreement granting a Franchise to Triax, or its predecessors, to own, operate and maintain a System within the City.

Subd. 6 Compliance with Applicable Laws, Resolutions and Ordinances. Triax shall at all times during the life of this Franchise be subject to all lawful exercise of the police power and the right of eminent domain by the City. This Franchise shall comply with the Minnesota franchise standards contained in Minnesota Statutes § 238.01 et. seq..

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

Subd. 8 Territorial Area Involved. This Franchise is granted for the corporate boundaries of the City, as it exists from time to time. In the event of annexation by the City, or as development occurs, any new territory shall become part of the area covered.

Triax shall not be required to extend service beyond its present System boundaries unless there is a minimum of twenty-five (25) homes per cable mile. Access to cable service shall not be denied to any group of potential residential cable Subscribers because of the income of the residents of the area in which such group resides. Grantee shall be given a reasonable period of time to construct and activate cable plant to service annexed or developed areas.

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

If to City: City of Silver Bay
Silver Bay City Hall
Silver Bay, Minnesota 55614
Attention: City Clerk

With copies to: Johnson and Morris
Norwest Bank Building
Silver Bay, Minnesota 55614
Attention: Gerald J. Morris

If to Triax: Triax Midwest Associates
4062 West County Road 42
Savage, Minnesota 55378
Attention: John Brinker

With copies to: Larkin, Hoffman, Daly & Lindgren, Ltd.
1500 Norwest Financial Center
7900 Xerxes Avenue South
Bloomington, Minnesota 55431
Attention: Jane E. Bremer

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

Subd. 10 Drops to Public Buildings. Triax shall provide Installation of one (1) cable Drop, one (1) cable outlet, and monthly Basic Service without charge to the following institutions in existence of the effective date of this Franchise and such other public or educational institutions located within one hundred fifty (150) feet of the System which City may designate:

Community Center
City Hall
Library
Fire Department
Two (2) City Schools
Veteran's Home

No redistribution of the free Cable Television Service provided pursuant to this Section shall be allowed. Additional Drops and/or outlets in any of the above locations will be provided at the cost of Triax's time and material. Nothing herein shall be construed as requiring Triax to extend the System to serve additional institutions as may be designated by City.

1320.07 Construction Standards.

Subd. 1 Construction Timetable. Triax shall complete construction of the system so as to make Cable Television Service available for residential Subscribers no later than four (4) months from the date of acceptance by Grantee.

Subd. 2 Construction Standards. If the System, or subsequent rebuilds or

extensions, proposed for the Franchise area consist of fewer than one hundred (100) plant miles of cable:

A. Within ninety (90) days of the granting of the Franchise, Triax shall apply for the necessary governmental permits, licenses, certificates, and authorizations;

B. The energized trunk cable must be extended substantially throughout the authorized area within one (1) year after receipt of the necessary governmental permits, licenses, certificates, and authorizations and the Persons along the route of the energized cable shall have individual Drops as desired during the same period of time; and

C. The above-stated requirements may be waived by the City only upon occurrence of acts beyond the reasonable control of Triax or acts of God.

Subd. 3 Construction Codes and Permits.

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

B. The City shall have the right to inspect all construction or installation work performed pursuant to the provisions of the Franchise and to make such tests at its own expense as it shall find necessary to ensure compliance with the terms of the Franchise and applicable provisions of

local, state and federal law.

Subd. 4 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 Triax, at its expense, to a condition as good as that prevailing prior to Triax's work, as approved by the City in the case of Streets and other public property.

Subd. 5 Notice. Triax shall give forty-eight (48) hours notice to the City Street Superintendent before any work referred to above is commenced that may affect City right-of-ways, streets, sidewalks, boulevards, alleys, highways, easement or public grounds.

Subd. 6 Conditions on Street Use.

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

B. All System transmission and distribution structures, lines and equipment erected by Triax within the 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. Triax shall furnish to and file with the City Administrator the maps, plats, and permanent records of the location and character of all facilities constructed, including underground facilities, and Triax shall file with the City updates of such maps, plats and permanent records annually if changes have been made in the System.

C. If at any time during the period of this Franchise the City shall elect to alter, or change the grade or location of any Street, alley or other public way, Triax shall, upon reasonable notice by the City, remove and relocate its poles, wires, cables, conduits, manholes and other fixtures of the System at its own expense, and in each instance comply with the standards and specifications of the City.

D. Triax 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 shall be so placed as to comply with all requirements of the City.

E. Triax shall, on request of any Person holding a moving permit issued by

the City, temporarily move its wires or fixtures to permit the moving of buildings with the expense of such temporary removal to be paid by the person requesting the same.

Triax shall be given not less than ten (10) days advance notice to arrange for such temporary changes.

F. Triax shall have the right, upon written consent by an authorized City representative to the extent City has authority to grant same, to trim any trees upon and overhanging the Streets, alleys, sidewalks, or public easements of the City only to the extent necessary to prevent the branches of such trees from coming in contact with the wires and cables of Triax.

Subd. 7 Undergrounding of Cable.

A. In all areas of the City where all other utility lines are placed underground, Triax 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.

B. In any area of the 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 Triax may construct and install its cables, wires and other facilities from the same pole with the consent of the owner of the pole.

C. Triax may be granted access to any easements granted to a public utility or utility district in any areas annexed by the City or new developments.

Such grant by City to Triax shall not be unreasonably withheld.

Subd. 8 Erection, Removal and Joint Use of Poles. No poles, conduits, or other wire-holding structures shall be erected or installed by the Triax without prior approval of the City with regard to location, height, type and other pertinent aspects.

Subd. 9 Safety Requirements.

A. Triax shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.

B. Triax shall install and maintain its System wires, cables, fixtures and other equipment in accordance with the requirements of the National Electric Safety Code and all FCC, state and local regulations, and in such manner that they will not interfere with any installations of the City or of any public utility serving the City.

C. 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 the 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.

Subd. 10 Emergency Use of Facilities.

A. In the case of any emergency or disaster, Triax shall, upon request of the City, make available its facilities to the City during the period of emergency or disaster.

B. The City may, in case of fire, disaster, or other emergency, as reasonably

determined by the City, cut or move any of the wires, cables, amplifiers, appliances, or other parts of the System.

C. Triax waives any claim against City arising from City's exercise of those rights.

1320.08 Design Provisions.

Subd. 1 Minimum Channel Capacity. Triax shall provide a System which is capable of delivering sixty (60) channels. Twenty-five (25) channels on the System shall be initially programmed and activated. All programming decisions remain the sole discretion of Triax provided that it notifies the City thirty (30) days prior to any channel additions or deletions, except for such programming authority which may be expressly granted to City by federal or state law.

Subd. 2 Operation and Maintenance of System. Triax 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 and shall occur during periods of minimum use of the System.

Subd. 3 Technical Standards. The technical standards used in the operation of the System shall comply, at minimum, with the technical standards promulgated by the FCC relating to cable communications Systems contained in Subpart K of Part 76 of the Federal Communications Commissions rules and regulations and found in Federal Regulations, Title 47, Section 76.601 to 76.617, as may be amended from time to time, which regulations are expressly incorporated herein by reference.

Subd. 4 Special Testing. The City may request 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).

Request for such special tests shall be made on the basis of complaints received or other evidence indicating an unresolved controversy or significant noncompliance. Such tests shall be limited to the particular matter in controversy. The City shall endeavor to so arrange its request for such special testing so as to minimize hardship or inconvenience to Triax or to the Subscribers. Before ordering such tests, Triax shall be afforded thirty (30) days to correct problems or complaints upon which tests were ordered. The City shall meet with Grantee prior to requesting 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 City wishes to commence special tests and the thirty (30) days have elapsed without correction of the matter in controversy, the tests shall be conducted by a qualified engineer selected by the City. In the event that special testing is required by the City to determine the source of technical difficulties, the cost of said testing shall be borne by Triax if the testing reveals the source of the technical difficulty to be caused by Triax's failure to comply with minimum applicable FCC technical standards. If the testing reveals Triax is in compliance with minimum applicable FCC technical standards, then the cost of said test shall be borne by the City.

Subd. 5 FCC Reports. The results of tests required to be filed by Triax with the FCC shall also be copied to the City.

Subd. 6 Nonvoice Return Capability. Triax is required to use cable having the

technical capacity for nonvoice return communications.

Subd. 7 Lockout Device. Upon the request of a Subscriber, Triax shall provide by sale or lease a Lockout Device.

1320.09 Services Provisions.

Subd. 1 Regulation of Service Rates. The City may regulate rates for the provision of cable service or any other communications service provided over the System only to the extent allowed under federal or state law(s). A list of Triax's current Subscriber rates and charges shall be maintained on file with the City and shall be available for public inspection. The list of rates shall include Triax's summer seasonal rate, if any, and information on any discounts offered. Triax shall give the City written notice of any change in a rate no less than thirty (30) days prior to the effective date of the change.

Subd. 2 Rates Include Three (3) Outlets. Rates for Cable Television Service shall include service for up to and including three (3) outlets in a single residential unit. Additional outlets shall be subject to additional charges. Triax may establish rules and procedures for the activation of any outlets in order to assure compliance with Federal and State law.

Subd. 3 Sales Procedures. Triax shall not exercise deceptive sales procedures when marketing its cable television services within the City. Triax shall not be charged a fee to market its cable services door-to-door during reasonable hours.

Subd. 4 Subscriber Inquiry and Complaint Procedures.

A. Triax 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.

B. Triax 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.

C. Subscriber requests for repairs shall be performed, to the extent possible, within twenty-four (24) hours of the request.

D. Triax shall not charge for repair or replacement of equipment due to normal wear and tear.

Subd. 5 Subscriber Contracts. Triax shall submit any Subscriber contract utilized to the City if no written contract exists, Triax shall file with the City Administrator 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 length and terms of any Subscriber contract shall be available for public inspection during normal business hours.

Subd. 6 Refund Policy. In the event a Subscriber established or terminates service and receives less than a full month's service, Triax 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.

1320.10 Public Access Provisions.

Subd. 1 Public, Educational and Government Access.

A. The City or its designee is hereby designated to operate, administer, promote and manage access (public, education and government) to the cable system established pursuant to this Section. Triax shall have no responsibility whatsoever for access (public, education and government) except as expressly stated in this Section.

B. Triax shall dedicate three (3) channels for access use for the following uses: public access, educational access, and government access. All residential Subscribers who receive all or any part of the total services offered on the System shall be eligible to receive all of said three (3) access channels at no additional charge. One (1) channel shall be activated upon System Activation and thereafter maintained, with the two (2) additional channels to be activated upon City request. City shall provide ninety (90) days' prior written notice to Grantee of City's intent to activate access channels and shall allow Grantee a reasonable time to vacate said channel(s) and/or rearrange program services to accommodate City's request.

C. Pursuant to Section 1320.10 Subd.1 B, Triax shall provide to each of its Subscribers who receive all, or part of, the total services offered on the System, reception on at least one (1) specially designated access channel. 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 that the specially designated access channel is not being used by local educational authorities or local government, Triax shall lease time to commercial or noncommercial users on a first-come, first-served, nondiscriminatory basis if the demand for that time arises. Triax may also use the specially designated access channel for local origination during those hours when the channel is not in use by local educational authorities, local government or commercial or noncommercial users who have leased time. The VHF spectrum must be used for the first specially designated access channel required in the section. Triax shall designate the channel locations of any other access channels.

Subd. 2 Access Rules.

A. Triax shall draft rules for use of any specially designated access channel which shall be submitted to City for review and implementation. The initial access rules and any amendments thereto shall be maintained on file with the City and available for public inspection during normal business hours.

B. Prior to the cablecast of any program on any access channel established herein, City 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 Triax and the City which releases, indemnifies and holds harmless the City, Triax 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.

Subd. 3 Access Equipment and Facilities. Triax shall provide and maintain the equipment itemized in Exhibit A for public use. Triax shall have no obligation to purchase, provide, maintain, repair or replace access equipment beyond that stated herein.

Subd. 4 Access Fund. Triax has heretofore paid to the City Five Thousand and no/100ths (\$5,000.00) Dollars for the sole purpose of purchasing equipment for public access use. Any funds provided hereunder which are used for any other purpose shall be deemed a franchise fee in Triax's sole discretion and the amount thereof shall be deducted from the next franchise fee payment hereafter due.

1320.11 Operation and Administration Provisions.

Subd. 1 Franchise Fee.

- A.** Triax shall pay to the City an annual amount equal to three percent (3%) of its annual Gross Revenues.
- B.** Payments due the City under this provision shall be payable quarterly. The payment shall be made within ninety (90) days of the end of each of Triax's fiscal quarters together with a brief report showing the basis for the computation.
- C.** All amounts paid shall be subject to audit and recomputation by the City.

Subd. 2 Access to Records. The City shall have the right to inspect, upon reasonable notice, at any time during normal business hours, those records maintained by Triax which relate to System operations and to Gross Revenues, subject to the privacy provisions of 47 U.S.C. § 521 et. seq. ("Cable Act").

Subd. 3 Reports to be Filed with City. Triax shall prepare and furnish to the City, at the times and in the form prescribed, such reports with respect to the operations, affairs, transactions or property, as they relate to the System, which Triax and the City may agree upon.

1320.12 General Financial and Insurance Provisions.

Subd. 1 Performance Bond.

A. At the time the Franchise becomes effective and at all times thereafter, until the Triax has liquidated all of its obligations with the City, Triax shall furnish a bond to the City in the amount of Ten Thousand Dollars (\$10,000) in a form and with such sureties as reasonably acceptable to the City. Triax shall restore the bond to its full amount within fifteen (15) days of any lawful draw by City pursuant to Section 1320.12 Subd. 2

A. This bond will be conditioned upon the faithful performance of Triax according to the terms of the Franchise and upon the further condition that in the event the Triax 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 the City as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of Triax, plus a reasonable allowance for attorneys' fees and costs, up to the full amount of the bond, and further guaranteeing payment by Triax of claims, liens and taxes due the City which arise by reason of the construction, operation, or maintenance of the System.

The rights reserved by the City with respect to the bond are in addition to all other rights the City may have under the Franchise or any other law. The City may, from year to year, in its sole discretion, reduce the amount of the bond.

B. If at any time Triax undertakes additional construction of the System in City, by way of a line extension, rebuild, or otherwise, with a projected cost in excess of Seventy Thousand and no/100 Dollars (\$70,000.00), Triax shall provide a bond to City in the amount equivalent to fifteen percent (15%) of the projected additional construction cost and shall maintain such bond during the term of said additional construction. Upon completion of said additional construction, Grantee shall provide written notice to City. Within thirty (30) day of receipt of notice of completion of said additional construction, City shall give written notice to Triax indicating whether City agrees the construction is complete or specifying those items of construction which City determines are not complete. At such time as City and Triax mutually agree that said additional construction of the System is complete, Triax shall provide to City a bond in the amount equal to the bond existing immediately before the commencement of said additional construction. Nothing herein shall be construed to require Triax to maintain more than one (1) bond with City as required by this paragraph.

Subd. 2 Procedure for Imposition of Penalties.

A. Whenever the City finds that Triax has violated one (1) or more material terms, conditions or provisions of this Franchise, a written notice shall be given to Triax informing it of such violation or liability.

The written notice shall describe in reasonable detail the specific violation so as to afford Triax an opportunity to remedy the violation. Triax shall have thirty (30) days subsequent to receipt of the notice in which to correct the violation. Triax may, within thirty (30) days of receipt of notice, notify the City that there is a dispute as to whether a violation or failure has, in fact, occurred. Such notice by Triax to the City shall describe in reasonable detail the matters disputed by Triax.

1. The City shall hear Triax's dispute at a meeting called in a timely manner. Triax shall be afforded a reasonable notice of the meeting and afforded a reasonable opportunity to participate in and be heard at this meeting. The City shall supplement the decision with written findings of fact.

2. If after hearing the dispute the claim is upheld by the City, Triax shall have thirty (30) days from such a determination to remedy the violation or failure. At any time after that thirty (30) days period, the City may draw against the performance bond for all reasonable penalties, not to exceed Fifty and no/100ths (\$50.00) Dollars per day.

B. The time for Triax to correct any violation or liability may be extended by the City 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 Triax commences the corrective action within the thirty (30) days period and thereafter uses reasonable diligence to correct the violation or liability.

C. In the event this Franchise is canceled by reason of default of Triax or revoked, City shall be entitled to collect from the performance bond that amount which is directly attributable to any damages sustained by the City pursuant to said default or revocation. Triax, 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.

Subd. 3 Indemnification of the City.

A. The City, its officers, boards, committees, commissions, elected officials, employees and agents shall not be liable for any loss or damage to any real or personal property of any Person, or for any injury to or death of any Person, arising out of or in connection with the construction, operation, maintenance, repair or removal of, or other action or event with respect to the System.

B. Triax shall indemnify, defend, and hold harmless the City, its officers, boards, committees, commissions, elected officials, employees and agents, from and against all liability, damages, and penalties which they may legally be required to pay as a result of the exercise of the franchise, except claims because of access programming.

C. Nothing in this Franchise relieves a Person from liability arising out of the failure to exercise reasonable care to avoid injuring Triax'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. City shall be liable for negligent acts by the City, its officers, boards, commissions, committees, elected officials, employees, and agents.

D. In order for the City to assert its rights to be indemnified, defended, and held harmless, the City must with respect to each claim:

- 1. Promptly notify Triax in writing of any claim or legal proceeding which gives rise to such right;**
- 2. Afford Triax the opportunity to participate in and fully control any compromise, settlement or other resolution or disposition of any claim or proceeding; and**
- 3. Fully cooperate with reasonable requests of Triax, at Triax's expense, in its participation in, and control, compromise, settlement or resolution or other disposition of such claim or proceeding subject to the paragraph.**

Subd. 4 Insurance.

A. As a part of the indemnification provided in Section 1320.12 Subd. 3, but without limiting the foregoing, Triax shall file with its acceptance, and at all times thereafter maintain in full force and effect at its sole expense, a comprehensive general liability insurance policy, including contractual liability coverage, in protection of the City in its capacity as such, its officers, elected officials, boards, commissions, agents and employees. The policy or policies shall name as additional insured the City, and their capacity as such, their officers, agents and employees. The policies of insurance shall be in the sum of not less than Three Hundred Thousand Dollars (\$300,000) for personal injury or death of any one (1) Person, and One Million Dollars (\$1,000,000) for personal injury or death of two (2) or more Persons in any one occurrence, Three Hundred Thousand Dollars (\$300,000) for property damage to any one person and One Million Dollars (\$1,000,000) for property damage resulting from any one act or occurrence.

B. The policy or policies of insurance shall be maintained by Triax in full force and effect during the entire term of the Franchise. Each policy of insurance shall contain a statement on its face that the insurer will not cancel the policy or fail to renew the policy, whether for nonpayment of premium, or otherwise, and whether at the request of Triax or for other reasons, except after thirty (30) days, advance written notice have been provided to the City.

1320.13 Sale, Abandonment, Transfer and Revocation of Franchise.

Subd. 1 City's Right to Revoke.

A. In addition to all other rights which the City has pursuant to law or equity, the City reserves the right to revoke, terminate or cancel this Franchise, and all rights and privileges pertaining thereto, if after the hearing required by Section 1320.13 Subd 2, it is determined that:

- 1. Triax has violated any material provision of this Franchise; or**
- 2. Triax has attempted to evade any of the material provisions of the Franchise or made any material misrepresentation in the application for or negotiation of this Franchise; or**
- 3. Triax has practiced fraud or deceit upon the City or Subscriber.**

B. The City may revoke this Franchise without the hearing required by Section 1320.13 Subd 2 if Triax is adjudged a bankrupt.

Subd. 2 Procedures for Revocation.

A. The City shall provide Triax with written notice of a cause for revocation and the intent to revoke and shall allow Triax sixty (60) days subsequent or receipt of the notice in which to correct the violation or to provide adequate assurance of performance in compliance with the Franchise. Together with the notice required herein, the City shall provide Grantee with written findings of fact which are the basis of the revocation.

B. Triax shall be provided the right to a public hearing affording due process before the Council prior to revocation, which public hearing shall follow the sixty (60) day notice provided in Paragraph above. The City shall provide Triax with written notice of its decision together with written findings of fact supplementing said decision.

C. After the public hearing and upon written determination by the City to revoke the Franchise, Triax may appeal said decision with an appropriate state or federal court or agency.

D. During the appeal period, the Franchise shall remain in full force and effect unless the term thereof sooner expires.

E. Upon satisfactory correction by Triax of the violation upon which said notice was given, the initial notice shall become void.

Subd. 3 Abandonment of Service. Triax may not abandon the System or any portion thereof without having first given three (3) months written notice to the City. Triax may not abandon the System or any portion thereof without compensating the City for damages resulting from the abandonment.

Subd. 4 Removal After Termination or Forfeiture.

A. In the event of termination or forfeiture of the Franchise, the City shall have the right to require Triax to remove all or any portion of the System from all Streets and public property within the City.

B. If Triax has failed to commence removal of System, or such part thereof as was designated by the City, within one hundred twenty (120) days after written notice of City's demand for removal is given, or if Triax has failed to complete such removal within twelve (12) months after written notice of the City's demand for removal is given, pursuant to the provisions of 47 U.S.C. 547 (1992), the City shall have the right to declare all right, title, and interest to the System to be in City with all rights of ownership including, but not limited to, the right to operate the System or transfer the System to another for operation.

Subd. 5 Performance Bond to Remain in Effect. In the event of termination, forfeiture, or abandonment, Triax shall maintain the bond required by Section 1320.12 Subd 1 until such time as Triax has liquidated its obligations to City.

Subd. 6 Sale or Transfer of Franchise.

A. No sale, transfer, or "fundamental corporate change" as defined in Minnesota Statutes § 238.083, including a fundamental change in the partnership structure of Grantee, of this Franchise shall take place until the parties to the sale, transfer, or fundamental corporate change files a written request with the City for its approval, provided, however, that said approval shall not be required where Triax grants a security interest in its Franchise and assets to secure an indebtedness.

B. The City shall have thirty (30) days from the time of the request to reply in writing and indicate approval of the request or its determination that a public hearing is necessary due to potential adverse affect on Triax's Subscribers resulting from the sale or transfer. Such approval or determination shall be expressed by Council Resolution. If the City fails to act within thirty (30) days of receipt of said request, the request shall be deemed approved as a matter of law.

C. If a public hearing is deemed necessary pursuant to paragraph (B) above, such hearing shall be commenced within thirty (30) days of such determination and notice of any such hearing shall be given in accordance with local law or fourteen (14) days prior to the hearing by publishing notice thereof once in a newspaper of general circulation in the City. The notice shall contain the date, time and place of the hearing and shall briefly state the substance of the action to be considered by the City. Said hearing may be continued with the consent of Triax.

D. Within thirty (30) days after the closing of the public hearing, the City shall approve or deny in writing the sale or transfer request. City shall set forth in writing with particularity its reason(s) for denying approval. The City shall not unreasonably withhold its approval.

E. The parties to the sale or transfer of the Franchise only, without the inclusion of the System in which substantial construction has commenced, shall establish that the sale or transfer of only the Franchise will be in the public interest.

F. Any sale or transfer of stock in Triax so as to create a new controlling interest in the System shall be subject to the requirements of Section 1320.13 Subd 6.

The term "controlling interest" as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.

G. In no event shall a transfer or assignment of ownership or control be approved without the transferee becoming a signatory to this Franchise.

H. In the event of any proposed sale or assignment pursuant to Section 1320.13 Subd. 6, the City shall have the right of first refusal of any bona fide offer to purchase the System. Bona fide offer, as used in this Section, means an offer received by the Grantee which it intends to accept subject to the City's rights under this Section. This written offer must be conveyed to the City along with Triax's written acceptance of the offer contingent upon the rights of the City provided for in this Section. The City shall be deemed to have waived its rights under this Section in the following circumstances:

1. If it does not indicate to Triax in writing, within 30 days of notice of a proposed sale or assignment, its intention to exercise its right of purchase; or
2. It approves the assignment or sale of the Franchise as provided within this Section.

1320.14 Protection of Individual Rights.

Subd. 1 Discriminatory Practices Prohibited. Triax shall not deny service, deny access, or otherwise discriminate against Subscribers or general citizens on the basis of race, color, religion, national origin, sex or age. Triax shall comply at all times with all other applicable federal, state, and city laws, and all executive and administrative orders relating to nondiscrimination.

Subd. 2 Subscriber Privacy.

A. 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.

B. No information or data obtained by monitoring transmission of a signal from a Subscriber 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.

C. 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 in paragraph B above.

1320.15 Miscellaneous Provisions.

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

Subd. 2 Work Performed by Others. All provisions of this Franchise shall apply to any subcontractor or others performing any work or services pursuant to the provisions of this Franchise. Triax shall provide notice to City of the name(s) and addresses of any entity, other than Triax, which performs substantial services pursuant to this Franchise.

Subd. 3 Amendment of Franchise Chapter. Triax and City may agree, from time to time, to amend this Franchise. Such written amendments may be made subsequent to a review session pursuant to Subd 7 of this section or at any other time if City and Triax agree that such an amendment will be in the public interest or if such an amendment is required due to changes in federal, state or local laws. The City shall act pursuant to local law pertaining to the ordinance amendment process.

Subd. 4 Compliance with Federal, State and Local Laws.

A. If any federal or state law or regulation shall require or permit City or Grantee to perform any service or act or shall prohibit the City or Triax from performing any service or act which may be in conflict with the terms of this Franchise, then as soon as possible following knowledge thereof, either party shall notify the other of the point in conflict believed to exist between such law or regulation. Triax and City shall conform to state laws and rules regarding cable communications not later than one (1) year after they become effective, unless otherwise stated, and to conform to federal laws and regulations regarding cable as they become effective.

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

Subd. 5 Nonenforcement by City. Triax shall not be relieved of its obligations to comply with any of the provisions of this Franchise by reason of any failure or delay of the City to enforce prompt compliance.

Any waiver by the City of a breach or violation of any provision of this Franchise shall not operate as or be construed to be a waiver of any subsequent breach or violation.

Subd. 6 Administration of Franchise. The City Administrator or other City designee shall have continuing regulatory jurisdiction and supervision over the System and the Grantee's operation under the Franchise. The City may issue such reasonable rules and regulations concerning the construction, operation and maintenance of the System as are consistent with the provisions of the Franchise and law.

Subd. 7 Periodic Evaluation. The field of cable communications is a relatively new and rapidly changing one which may see many regulatory, technical, financial, marketing and legal changes during the term of this Franchise. Therefore, in order to provide for a maximum degree of flexibility in this Franchise, and to help achieve a continued advanced and modern System, the following evaluation provisions shall apply:

A. The City may require evaluation sessions at any time during the term of this Franchise, upon thirty (30) days written notice to Triax, provided, however, there shall not be more than one review session during any five (5) year period.

B. Topics which may be discussed at any evaluation session may include, but are not limited to, application of new technologies, including stereo capability, System performance, programming offered, access channels, facilities and support, municipal uses of cable, customer complaints, rates and other charges, amendments to this Franchise, judicial rulings, FCC rulings, line extension policies and any other topics the City and Triax deem relevant.

C. As a result of a periodic review or evaluation session, the City and Triax may, in good faith, develop such changes and modifications to the terms and conditions of the Franchise, as are mutually agreed upon and which are both economically and technically feasible.

Subd. 8 Citizens Advisory Board. The City may appoint a citizen advisory body to monitor the performance of the Triax pursuant to the Franchise and advise the City of same. As a result of any periodic evaluation session as promulgated pursuant to Subd 7 of this Section, the advisory body may submit a report to the City and Triax assessing the Triax's performance according to the terms of the Franchise and make recommendations to the City regarding the System's operations.

Subd. 9 Triax's Acknowledgment of Validity of Franchise. Triax acknowledges that it has had an opportunity to review the terms and conditions of this Franchise and that under current law Triax believes that the terms and conditions are not unreasonable or arbitrary, and that Triax believes the City has the power to make the terms and conditions contained in this Franchise.

Subd. 10 Reservation of Rights. The rights set forth herein are in addition to all other rights of the City and/or Triax whether reserved by this Franchise or authorized by law, and no action, proceeding or exercise of a right shall affect any other right the City and/or Triax may have.

1320.16 Publication Effective Date; Acceptance and Exhibits.

Subd. 1 Publication: Effective Date. This Franchise shall be published in accordance with applicable Minnesota law. The effective date of this Franchise shall be the date of acceptance by Triax in accordance with the provisions of Subd 2 of this Section.

Subd. 2 Acceptance.

A. Triax shall accept this Franchise no later than thirty (30) days after its adoption by the City, unless the time for acceptance is extended by the City. Such acceptance by the Triax shall be deemed the grant of this Franchise for all purposes. In the event acceptance does not take place, this Franchise and any and all rights previously granted to Triax shall be null and void.

B. Upon acceptance of this Franchise, Triax shall be bound by all the terms and conditions contained herein.

C. Triax shall accept this Franchise in the following manner:

1. This Franchise will be properly executed and acknowledged by Triax and delivered to City.

2. Triax shall have continuing responsibility for this 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 guarantee of the parent corporation in a form and substance acceptable to City, which shall be delivered with the executed Franchise.

3. With its acceptance, Triax shall also deliver any performance bond and insurance certificates required herein that have not previously been delivered.

Subd. 3 Exhibits. Each exhibit is part of this Franchise and each is specifically incorporated herein by reference. The exhibits are as follows:

Exhibit A. Access Equipment provided to City.

Exhibit B. Plant Map.

EXHIBIT A

(Section 1320.10 Subd. 3)

SILVER BAY PUBLIC ACCESS EQUIPMENT

<u>Qty.</u>	<u>Description</u>
1	Scientific-Atlanta Modulator, M/N 6350 (S/N 3501)
1	Zenith AC/DC TV, M/N F0930S (S/N 921-22390010)
1	Panasonic VCR, M/N AG1000 (S/N C8TBOO573)
1	Tripod, M/N 5-95534-9
1	Panasonic Camera/Recorder, M/N AG-170 (S/N L8HBO2626)
1	Realistic Dynamic Microphone, Catalog #33-985F