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# CHAPTER 13

## FRANCHISE REGULATIONS

### Section 1300 - Electric Franchise (2013)

**GRANTING TO MINNESOTA POWER A NONEXCLUSIVE FRANCHISE TO CONSTRUCT, OPERATE, REPAIR AND MAINTAIN IN THE CITY OF SILVER BAY, MINNESOTA, AN ELECTRIC DISTRIBUTION SYSTEM AND TRANSMISSION LINES, INCLUDING NECESSARY POLES, LINES, FIXTURES AND APPURTENANCES, FOR THE FURNISHING OF ELECTRIC ENERGY TO THE CITY, ITS INHABITANTS, AND OTHERS, AND TO USE THE PUBLIC WAYS AND PUBLIC GROUNDS OF THE CITY FOR SUCH PURPOSES; AND PRESCRIBING CERTAIN TERMS AND CONDITIONS THEREOF.**

**1300.0.1. Definitions.** For purposes of this Franchise, the following capitalized terms listed in alphabetical order shall have the following meanings:

- 1. City.** The City of Silver Bay, County of Lake, State of Minnesota and the corporate limits thereof on the Effective Date and as they may be adjusted from time to time hereafter.
- 2. City Utility System.** Facilities used for providing public utility service owned or operated by the City or agency thereof, including sewer, storm sewer, water service, street lighting and traffic signals.
- 3. Commission.** The Minnesota Public Utilities Commission, or any successor agency or agencies, including an agency of the federal government, which preempts all or part of the authority to regulate electric retail rates now vested in the Minnesota Public Utilities Commission.
- 4. Company.** Minnesota Power, an operating division of ALLETE, Inc., its successors and assigns including all successors or assignees that own or operate any part or parts of the Electric Facilities subject to this Franchise.
- 5. Company Service Area.** Those areas within the City to which the Company has been assigned the right to provide electric service, as in effect on the Effective Date or as may be hereafter revised.

- 6. **Council.** The City Council of the City of Silver Bay as from time to time constituted.
- 7. **Effective Date.** The effective date of this Ordinance.
- 8. **Electric Facilities.** Electric transmission and distribution substations, towers, poles, lines, guys, anchors, conduits, fixtures, and necessary appurtenances owned or operated by the Company within the City's municipal boundary for the purpose of providing electric energy for public or private use.
- 9. **Extension Rules.** The rules adopted from time to time by the Company governing its extension of Electrical Facilities.
- 10. **Franchise.** The grant of rights made by the City to the Company in this Ordinance, subject to its terms and conditions.
- 11. **Notice.** A writing served by any party or parties on any other party or parties at the following addresses:

If to the City: City of Silver Bay  
7 Davis Drive  
Silver Bay, MN 55614  
Attn: City Administrator

If to the Company: Minnesota Power  
30 West Superior Street  
Duluth, MN 55802  
Attn: Vice President of Marketing

Any party may change its respective address for the purpose of this Ordinance by written notice to the other parties.

- 12. **Person.** A natural person or any partnership, joint venture, corporation, cooperative, limited liability company or any public corporation, political subdivision or agency of the State or any other legal entity that may be created by law.
- 13. **Public Ground.** All real property owned by or dedicated to the City with respect to which the City holds the legal right or title to grant or withhold easement, leasehold or occupancy rights or servitudes.
- 14. **Public Way.** Any street, alley and other public rights-of-way within the City.
- 15. **Utility.** Transmitting, furnishing, transporting, distributing, delivering, selling, receiving, importing, manufacturing, or causing to be produced, transmitted, furnished, transported, delivered, sold, received, imported, or manufactured, electric energy, natural

gas, mixed gas, heat, light, power, and services provided through a cable communication system.

**16. Utility Service Provider.** Any Person who performs any one or more of the activities of a Utility to or for the public or to or for any one or more persons within the corporate limits of the City and may, as contemplated herein, be the ultimate user or consumer of the Utility service provided.

**1300.02. Franchise Intent.** This Ordinance is intended to cover the right of the Company to construct, operate, repair and maintain Electric Facilities in, on, over, under and across the Public Ways and Public Grounds within the Company Service Area for the purposes set forth in Section 1300 hereof. In all other respects this Ordinance is not intended in any way to affect or modify or surrender any powers now held by the City, or which may hereafter be granted to the City by the State Legislature, or to affect the powers of the State Legislature in dealing with the Company in authorizing taxation of the Company or its properties, in the regulation of its rates and charges, or in otherwise regulating or controlling the Company and its properties in all ways consistent with the Constitution of the United States and the Constitution of the State of Minnesota.

**1300.03. The Franchise.**

**Subd. 1. Grant of Franchise.** The City hereby grants the Company, for a period of ten (10) years from the date this Ordinance is passed and approved by the City, the right to transmit and furnish electric energy for any public or private use within and through the Company Service Area. For these purposes, the Company may construct, operate, repair and maintain Electric Facilities in, on, over, under and across the Public Ways and Public Grounds within the Company Service Area, subject to the provisions of this Ordinance. The Company may do all reasonable things necessary or customary to accomplish these purposes, subject however, to all applicable design and safety codes, the provisions of this Ordinance, zoning ordinances, other applicable ordinances, permit procedures and the customary and necessary practices of the City.

**Subd. 2. Not Exclusive.** This Franchise is not exclusive.

**Subd. 3. Effective Date.** This Franchise shall be in force and effect from and after the passage of this Ordinance and publication as required by law and upon the Company's duly authorized acceptance below as executed within thirty (30) days after passage and publication of this Ordinance or any amendment thereto.



**1300.04. Locations; Construction; Other Regulations.**

**Subd. 1. General.** Electric Facilities shall be located, constructed and maintained by the Company: (i) in as safe and secure a condition or manner as reasonably possible, (ii) so as not to interfere with the safety and convenience of ordinary travel along and over Public Ways, and (iii) so as not to disrupt or interfere with the normal use or operation of any Public Ways, Public Ground or the City Utility System. Electric Facilities may only be located on Public Ground as determined by the City in its sole discretion. The Company's construction, reconstruction, operation, repair, maintenance, location and relocation of Electric Facilities shall be subject to the terms of this Ordinance and such other regulations of the City consistent with authority granted the City to manage its Public Ways and Public Grounds under state law, to the extent not inconsistent with a specific term of this Ordinance.

**Subd. 2. Construction; Maintenance; Repairs.** Whenever the Company desires to open or disturb any Public Way or Public Ground for the purpose of constructing, maintaining, or repairing Electric Facilities, it shall give the City reasonable advance Notice, but not less than ten (10) business days, by filing a written Notice with the City Administrator. In any case, the Company shall not commence such work before obtaining any applicable permit for which the City may impose a reasonable fee, or other appropriate written consent from the City. The Company shall not, during the progress of the work, endanger or unnecessarily obstruct the passage of traffic or the normal and customary use of the Public Ways and Public Ground. During the progress of such work, the Company shall keep the affected Public Ways or Public Ground guarded in order to avoid accidents to persons or property. All work performed by the Company shall comply with all applicable federal, state, and local laws, rules, and regulations.

**Subd. 3. Emergencies.** The requirements for obtaining permits from the City pursuant to Subd. 2 above, shall not apply if (i) an emergency exists requiring the immediate repair of Electric Facilities and (ii) the Company gives telephone notice to the City before, if reasonably possible, commencement of the emergency repair. Within two (2) business days after commencing the repair, the Company shall apply for any required permits and pay any required fees.

**Subd. 4. Restoration.** Following the completion of any work, the Company shall promptly and diligently restore the affected Public Ways and/or Public Ground to as good a condition as before the work commenced, and shall warrant the work for one (1) year thereafter. If the Company fails to promptly restore such Public Ways and/or Public Ground within ten (10)

days of Notice by the City, the City may engage an independent contractor at the expense of the Company to perform the restoration of the Public Ways and/or Public Ground as required under this Section. The Company shall pay to the City upon demand the cost to the City of affecting such restoration including the City's administrative expenses and overhead.

**Subd. 5. Avoidance of Damage.** The Company must take reasonable measures to prevent the Electric Facilities from causing damage to persons or property. The Company must take reasonable measures to protect the Electric Facilities from damage that could be inflicted on the Electric Facilities by persons, property, or the elements. The Company must take protective measures when the City performs work near the Electric Facilities, if given reasonable Notice by the City of such work prior to its commencement.

**Subd. 6. Field Locations.** The Company shall provide field locations for all its underground Electric Facilities when requested by the City within a reasonable period of time. The period of time will be deemed reasonable if it meets the requirements of the one call excavation notice system as now provided in Minnesota Statutes, chapter 216D (commonly known as of the Effective Date as the "Gopher State One Call" system).

**Subd. 7. Shared Use of Poles.** If the City desires to place facilities for a public purpose on Company's poles, the Company shall make space available for City attachments whenever such attachments do not conflict with applicable codes and regulations and will not unreasonably interfere with the safe operation of Company equipment, impede Company access to poles or equipment, or interfere with other parties' legal rights to access and use Company poles; and provided that the City enters into an appropriate License Agreement with the Company with respect to such attachments.

**Subd. 8. Vegetation Management.** Subject to such procedures, regulation and supervision as the Council may establish, the Company may, at its cost, engage in vegetation management in the Public Ways located within the Company Service Area to the extent the Company finds it necessary to avoid interference with the proper construction, operation, repair and maintenance of any of the Company's Electric Facilities installed or maintained hereunder. Prior to undertaking any vegetation management, the Company will contact the City Administrator.

**Subd. 9. Notice of City Improvements.** The City will give the Company reasonable advance Notice of plans for improvements to Public Ways and Public Ground in the Company

Service Area where the City has reason to believe that the Company's Electric Facilities may affect or be affected by such improvements. The Notice will contain: (i) the nature and character of the improvements, (ii) the Public Ways and/or Public Ground upon which the improvements are to be made, (iii) the extent of the improvements, (iv) the time when the City will start the work, and (v) if more than one Public Way or parcel of Public Ground is involved, the order in which the work is to proceed.

**Subd. 10. Acquisition.** The City shall have the right to purchase or otherwise acquire the Company's Electric Facilities or the Company Service Area, or portion(s) thereof, at any time by way of eminent domain under Minnesota Statutes, Chapter 117 or under Minnesota Statutes, Chapter 216B, in either case, as such statutes or amendments to such are in effect on the date the City commences such purchase or acquisition. In that event, the pleading commencing the acquisition proceeding by the City shall be noticed to the Company for it to make any adjustments to its long-range planning for facilities and service for the area affected by the proceeding. Any damages to the Company as a result of such proceeding shall be determined as of the commencement of such proceeding. The Company shall continue to operate the Electric Facilities at the City's sufferance only until such acquisition is completed. The expiration or termination of this Franchise as hereinbefore provided shall not, by itself, be an independent basis of any claim by the Company against the City.

**1300.05. Electric Facilities Relocation.**

**Subd. 1. Relocation.** In the event the City reasonably determines that it is necessary for the Company to move any part of its Electric Facilities because the City has determined to change, move or improve its Public Ways or that the Electric Facilities have become or will become a substantial impairment to the existing or imminent public use of Public Ground, upon reasonable Notice by the City to the Company, then the Company will move its Electric Facilities at its sole cost. The City shall consider reasonable alternatives in designing its public works projects so as not to arbitrarily cause the Company unreasonable additional expense in exercising its authority under this Subdivision. This Subdivision shall not constitute a taking by the City nor be construed as a waiver or modification of any easement or prescriptive rights acquired by the Company independent of and without reliance by the Company on this Franchise.

**Subd. 2. No Release of Liability.** Nothing contained herein shall relieve any third party from liability arising out of their failure to exercise reasonable care to avoid injuring the

Company's Electric Facilities while performing any work connected with grading, regrading or changing the line of any Public Way or with any construction on or adjacent to any Public Way; provided, however, this Subdivision shall not limit the City's rights to indemnification under Sub-Section 1300.06 nor shall the City in any way be liable to the Company for claims arising from the negligence of any third party.

**Subd. 3. Projects with State or Federal Funding.** Relocation, removal, or rearrangement of any electric distribution facilities owned by Minnesota Power made necessary because of the extension into or through the City of a federally-aided highway project shall be governed by the provisions of §161.46 of Minnesota Statutes. It is understood that the right herein granted to Minnesota Power is a valuable right and the City shall not order Minnesota Power to remove or relocate its facilities when a public way is vacated, improved, or realigned because of a renewal or a redevelopment plan which is financially subsidized in whole or in part by the United States or any agency thereof, unless the reasonable non-betterment costs of such relocation and the loss and expense resulting therefrom are first paid to Minnesota Power, but the City need not pay those portions of such items for which reimbursement to it is not available.

**1300.06. Indemnification.**

**Subd. 1. Indemnification.** If at any time any claim of any kind is made against the City for injury to persons or property arising from the acts or failure to act by the Company, its agents, servants, or employees in connection with the operations of the Company under and pursuant to this Franchise, the Company shall fully indemnify, defend and hold harmless the City, its agents, servants or employees from any and all such claims, including, but not limited to, reimbursement of any reasonable attorneys fees and costs and expenses the City may incur in handling, denying, or defending such claims. The Company's obligation to indemnify the City shall not extend to any injury to persons or property caused by the negligent act or failure to act by the City or any actions taken by the Company pursuant to directions of the City if performed within the scope of the City's directions without negligence by the Company. The City shall determine who will defend any such claims arising under this Subdivision and the Company will thereafter have complete control of such litigation; provided, however, the Company may not settle any such claims without the prior approval of the City, which approval will not be unreasonably withheld. This Section is not a waiver of any defense or immunity otherwise available to the City pursuant to the Minnesota Municipal Tort Claims Act, or otherwise. The Company in defending any action

shall be entitled to assert every defense or immunity that the City could itself assert in its own behalf. The Company's obligations under this Section shall survive the expiration, amendment, or termination of this Ordinance.

**Subd. 2. Insurance.** Before the Effective Date, the Company shall furnish the City a summary of insurance, if any, carried by the Company, or of its self-insured status, in either case demonstrating adequate protection to the City from any and all obligations, liabilities, or claims of any nature whatsoever, growing out of the operation, construction, and maintenance of its Electric Facilities within the City. The Company shall maintain such insurance coverage at all times during this Franchise.

**Subd. 3. Compliance with Laws; Hazardous Substances.** In its operation under this Ordinance, the Company shall observe all federal, state and local laws, rules, regulations and orders with respect to the transmission, distribution, transformation or furnishing of electric energy and the handling of materials, substances and wastes deemed toxic or hazardous to health, natural resources or the environment (collectively, "Hazardous Substances"). The Company shall remove or remediate any Hazardous Substances located on, in or surrounding its Electric Facilities or caused to be located on, in or surrounding the Public Ways and Public Grounds or elsewhere in the City in compliance with all applicable laws, regulations and lawful government orders, and pay or cause to be paid all costs associated therewith. The indemnification terms and conditions of Sub-section 1300.06, Subd. 1, shall apply to all claims made against the City by any Person, including any governmental agency, who or which asserts any right to costs, damages or other relief based upon the terms and conditions imposed upon the Company under this Subdivision or which arise from or are related to the Company's acts or failure to act in compliance with any law, rule, regulation or lawful order governing Hazardous Substances.

**1300.07. Vacation of Public Ways.** The City will consult with the Company at least four (4) weeks prior to its action on any proposed vacation of a Public Way. Except where ordered pursuant to Sub-section 1300.05, the vacation of any Public Way after the installation of Electric Facilities shall not operate to deprive the Company of its rights to operate and maintain such Electric Facilities until the reasonable cost of relocating the same and the loss and expense resulting from such relocation are first paid to the Company. However, in no case shall the City be liable to the Company for failure to specifically preserve a Public Way in the exercise of its authority under Minnesota Statutes, Section 160.29.

**1300.08. Abandoned Facilities.** The Company shall comply with City ordinances and Minnesota Statutes, Section 216D.01 et seq., as they may be amended from time to time. The Company shall maintain records describing the exact location of all abandoned and retired Facilities within the City, produce such records at the City's request, and comply with the location requirements of Section 216D.04 with respect to all Electric Facilities, including abandoned and retired Electric Facilities.

**1300.09. Rates and Service.** The electric service provided and the rates charged by the Company for electric service, as of the Effective Date, are subject to the jurisdiction of the Commission as provided in Minnesota Statutes, chapter 216B. In the event the Company shall determine after the Effective Date to change its rates or terms and conditions of electric service, the Company shall provide reasonable advance Notice of such proposed action to the City.

**1300.10. Franchise Fee.**

**Subd. 1. Authority.** The City reserves all rights under Minnesota Statutes, Sections 216B.36 and 301B.01 or other law to require a franchise fee at any time during the term of, and in consideration for, this Franchise. The franchise fee may be expressed (i) as a specified charge per measurable unit of electricity being provided, transported, transmitted, sold, furnished, delivered, or received within the City, or (ii) as a percentage of the Gross Revenues received by the Company for its operations within the City, or (iii) a flat fee per customer based on service to retail customers within the City or on some other similar basis, or (iv) in such other manner or fashion as the City may determine. The method of imposing the franchise fee may differ by customer class, by type of Utility, by particular circumstances of a Utility Service Provider, or by other relevant factor, and may combine the methods described in (i) through (iv) above. Any franchise fee must be imposed by a separate ordinance adopted by the City, which ordinance may not become effective until at least thirty (30) days after the issuance of a written order from the Minnesota Public Utilities Commission authorizing the Company to incorporate such fee within its rate schedule and thereby pass along the costs of such fee to the Company's customers located within the City. The Company agrees to use its commercially reasonable efforts to obtain such Minnesota Public Utilities Commission authorization.

**Subd. 2. Payment of Fee.** Subject to Commission approval, or no later than 90 days the franchise fee shall be payable monthly and shall be based on the complete billing month for which payment is due. The payment shall be due forty-five (45) days after the end of the month for which

the payment is due. Each payment shall be accompanied by a brief report showing the basis for the computation of the payment and such other relevant facts to support the computation as may be requested by the City from time to time. The Company is authorized to impose a surcharge equivalent to the franchise fee established pursuant to Subd. 4 of this Section. The Company shall pay the City the franchise fee based upon the prevailing rate and as billed to the customer, but subject to subsequent adjustment in either of the following events: (i) if any amount so billed subsequently becomes uncollectible after reasonable efforts of collection by the Company or (ii) if the Company shall, after any said billings, retroactively reduce its rates or costs to its retail electric customers so that a refund is due from the Company of an amount previously paid or incurred by the retail electric customers. For purposes of calculating the franchise fee, no other adjustment may be made to Gross Revenues, regardless of how calculated or described and whether or not characterized as a rebate, dividend, patronage, refund, return of capital, or ownership interest.

**Subd. 3. No Waiver or Release.** No acceptance of any payment shall be construed as an accord that the payment made is in fact the correct amount, nor shall such acceptance of the payment be construed as a release of any claim that the City may have for further sums payable under the provisions of this Ordinance. All amounts paid shall be subject to audit and re-computation by the City. The Company agrees to make all records necessary to audit the Company's calculation of any payment available for inspection by the City or its designated representative at reasonable times.

**Subd. 4. Franchise Fee.** There shall be added to each customer's monthly electric service bill a City of Silver Bay Franchise Fee assessment in the amount of \$3 per month for each residential, commercial, industrial, or other electric service meter. However, customers with both standard electric service meters and dual fuel meters shall only be assessed one application of the franchise fee. The amount paid by Company shall be in lieu of, and Company shall be exempt from, all other occupation, license, excise or right-of-way permit fees or taxes which the City may impose for the rights and privileges herein granted or for the privilege of doing business within the City, and in the event any such fee, charge, license, tax or assessment shall be imposed by the City, the payment to be made in accordance with the provisions of this section shall be reduced in an amount equal to the annual burden of such fee, charge, license, tax or assessment imposed upon

the Company. Ad valorem property taxes imposed generally upon all real and personal property within the City shall not be deemed to affect the obligation of the Company under this section.

**Subd. 5. Separate Ordinance.** Notwithstanding anything to the contrary, the franchise fee may be changed by the City from time to time by separate ordinance; provided, however, such changes shall not occur more often than once in any calendar year and shall be effective not sooner than the first day of the first calendar month which follows the effective date of the ordinance adopting the change by not less than sixty (60) days subject to Company obtaining Minnesota Public Utilities Commission approval of the new franchise fee rate but no later than 90 days. Notice of the proposed change shall be given to the Company not later than the effective date of the ordinance adopting the change.

**Subd. 6. Restricted Use of Franchise Fee.** The City has chosen to restrict the use of the franchise fees to the maintenance, repair, and/or replacement of city streets, curbs, gutters, sidewalks, and public parking areas.

**1300.11. Default and Election of Remedies.** If the Company shall be in default in the performance of any of the material terms and conditions of this franchise, and shall continue in default for more than thirty (30) days (or fails to initiate the cure of the default within said period and diligently pursue said cure, if the cure of the default cannot reasonably be accomplished within said 30 days) after receiving Notice from the City of such default, the City may elect to cure such default and charge the Company for the costs and expenses incurred by the City for the cure thereof. No remedy provided hereunder shall be deemed an exclusive remedy and the election of any such remedy shall not bar pursuit of any other remedy or any combination thereof, or subsequent seeking of the same remedy for other damages or otherwise, whether available hereunder or existing at law or in equity. No waiver of any breach of any covenant, condition or agreement herein contained shall operate as a waiver of any subsequent breach thereof.

**1300.12. Amendment Procedure.** The City reserves the right to amend this Franchise by ordinance. The Company's rights hereunder are subject to the police power of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public, and this Franchise may be amended by the City as deemed necessary or appropriate in the exercise of such power.



**1300.13. General Provisions of Franchise.**

**Subd. 1. Governing Law.** This Franchise is granted and is intended to be performed in the State of Minnesota and shall be construed and enforced in accordance with the laws of the State of Minnesota. The Company shall be subject to personal jurisdiction in the State of Minnesota. All actions related to this franchise or its enforcement shall be venued in the District Court of the State of Minnesota within which venue the City is located.

**Subd. 2. Right to Repeal.** If this Franchise, having become final and operative as herein provided, shall be declared in any part illegal or void, then the City, in its sole discretion, may repeal the entire or any portion of this franchise. If any portion of this franchise or the franchise granted hereunder is found to be invalid for any reason whatsoever, the validity of the remainder shall not be affected.

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

**Subd. 4. Assignment.** The Company shall not assign this Franchise without the prior approval by the City.

**1300.14. Acceptance By The Company.**

**Subd. 1. Acceptance by the Company.** The Company shall, within thirty (30) days after passage and publication of this franchise or any amendment thereto, file with the City Administrator in writing its acceptance or rejection as provided in Subd. 2. If such acceptance is not filed or if a rejection is filed within said period, the Company, by its continuing operations, shall be deemed to have accepted the terms and conditions of this Franchise or any amendment hereto, except with respect to such particulars as it may successfully challenge under the procedures specified in Subd. 2.

**Subd. 2. Rejection Procedures.** A rejection of this Franchise or any amendment hereto may be made by the Company only upon the grounds that the terms and conditions hereof or of such amendment exceed the lawful authority of the City under the Constitutions or Laws of the United States or the State of Minnesota or are otherwise unlawful. Any rejection shall be submitted in writing to the City, stating with particularity the points and authorities of law upon which the

Company relies. If the City fails to amend this Franchise or otherwise satisfy the Company's objections as stated within thirty (30) days of its receipt of the Company's rejection, the Company shall have the right thereafter to seek appropriate judicial or administrative relief based solely upon those provisions it has alleged are unlawful in its rejection notice. If the Company fails to initiate such legal action within thirty (30) days from the expiration of the aforementioned thirty (30) day period provided for the City's amendment or cure, the Company shall be deemed to have waived its objections and to have accepted the terms of this Franchise or any amendment hereto.

**1300.15. Previous Electric Franchise Repealed.** The prior Electric Franchise granted to Minnesota Power, the predecessor to the Company herein, pursuant to Silver Bay City Code Section 1300, is hereby repealed and superseded by this Section 1300 Electric Franchise (2013).

### **Section 1310 - Gas Franchise (2013)**

**GRANTING TO MINNESOTA ENERGY RESOURCES A NONEXCLUSIVE FRANCHISE TO CONSTRUCT, OPERATE, REPAIR AND MAINTAIN IN THE CITY OF SILVER BAY, MINNESOTA, A NATURAL GAS PLANT AND DISTRIBUTION SYSTEM, INCLUDING NECESSARY PIPE-LINES, FIXTURES, AND APPURTENANCES, FOR THE FURNISHING OF NATURAL GAS TO THE CITY, ITS INHABITANTS, AND OTHERS, AND TO USE THE PUBLIC WAYS AND PUBLIC GROUNDS OF THE CITY FOR SUCH PURPOSES; AND PRESCRIBING CERTAIN TERMS AND CONDITIONS THEREOF.**

**1310.01. Definitions.** For purposes of this Franchise, the following capitalized terms listed in alphabetical order shall have the following meanings:

- 1. City.** The City of Silver Bay, County of Lake, State of Minnesota and the corporate limits thereof on the Effective Date and as they may be adjusted from to time to time hereafter.
- 2. City Utility System.** Facilities used for providing public utility service owned or operated by the City or agency thereof, including sewer, storm sewer, water service, street lighting and traffic signals.
- 3. Commission.** The Minnesota Public Utilities Commission, or any successor agency or agencies, including an agency of the federal government, which preempts all or part of the authority to regulate gas retail rates now vested in the Minnesota Public Utilities Commission.
- 4. Company.** Minnesota Energy Resources, a subsidiary of Integrys Energy Group, a

Delaware Corporation, its successors and assigns, including all successors or assignees that own or operate any part or parts of the Gas Facilities subject to this Franchise.

- 5. Council.** The City Council of the City of Silver Bay as from time to time constituted.
- 6. Effective Date.** The effective date of this Ordinance.
- 7. Gas Facilities.** Gas transmission and distribution pipes, mains, lines, ducts, fixtures, and all necessary facilities, equipment and appurtenances owned, operated, or otherwise used by the Company for the purpose of providing Gas energy for public or private use.
- 8. Franchise.** The grant of rights made by the City to the Company in this Ordinance, subject to its terms and conditions.
- 9. Notice.** A writing served by any party or parties on any other party or parties at the following addresses:

If to the City: City of Silver Bay  
7 Davis Drive  
Silver Bay, MN 55614  
Attn: City Administrator

If to the Company: Minnesota Energy Resources  
2665 145<sup>th</sup> St. W.  
Rosemount, MN 55068  
Attn: General Manager

Any party may change its respective address for the purpose of this Ordinance by written notice to the other parties.

- 10. Person.** A natural person or any partnership, joint venture, corporation, cooperative, limited liability company or any public corporation, political subdivision or agency of the State or any other legal entity that may be created by law.
- 11. Public Ground.** All real property owned by or dedicated to the City with respect to which the City holds the legal right or title to grant or withhold easement, leasehold or occupancy rights or servitudes.
- 12. Public Way.** Any street, alley and other public rights-of-way within the City.
- 13. Utility.** Transmitting, furnishing, transporting, distributing, delivering, selling, receiving, importing, manufacturing, or causing to be produced, transmitted, furnished, transported, delivered, sold, received, imported, or manufactured, Gas energy, natural gas, mixed gas, heat, light, power, and services provided through a cable communication

system.

**14. Utility Service Provider.** Any Person who performs any one or more of the activities of a Utility to or for the public or to or for any one or more persons within the corporate limits of the City and may, as contemplated herein, be the ultimate user or consumer of the Utility service provided.

**1310.02. Franchise Intent.** This Ordinance is intended to cover only the right of the Company to the use of the City's public way for the purposes set forth in Section 1 hereof. In all other respects this Ordinance is not intended in any way to affect or modify or surrender any powers now held by the City, or which may hereafter be granted to the City by the State Legislature, or to affect the powers of the State Legislature in dealing with the Company in authorizing taxation of the Company or its properties, in the regulation of its rates and charges, or in otherwise regulating or controlling the Company and its properties in all ways consistent with the Constitution of the United States and the Constitution of the State of Minnesota.

**1310.03. The Franchise.**

**Subd. 1. Grant of Franchise.** The City hereby grants the Company, for a period of ten (10) years from the effective date this Ordinance is passed and approved by the City, the right to import, transport, distribute, and sell natural gas for any public or private use within and through the limits of the City. The Ordinance/Franchise shall be automatically extended for up to one (1) additional term of ten (10) years, provided, however, that the City may notify the Company in writing at least ninety (90) days before the expiration of the initial term, that City desires to renegotiate the Ordinance/Franchise. For these purposes, the Company may construct, operate, repair and maintain Gas Facilities in, on, over, under and across the Public Way subject to the provisions of state law, this ordinance, and to provisions of other city right-of-way ordinances including permit and fee requirements, as the same may be amended, supplemented or replaced. The Company shall be notified sixty (60) days in advance of any adoption of, or proposed changes to, any City ordinance regulating its Public Ways or modifying permit or fee requirements of the Company. The service to be provided and the rates to be charged by Company for gas service in the City are subject to the jurisdiction of the Commission.

**Subd. 2. Not Exclusive.** This Franchise is not exclusive.

**Subd. 3. Effective Date.** This Franchise shall be in force and effect from and after the passage of this Ordinance and publication as required by law and upon the Company's duly

authorized acceptance below as executed within sixty (60) days after passage and publication of this Ordinance or any amendment thereto.

**1310.04. Locations; Construction; Other Regulations.**

**Subd. 1. General.** Gas Facilities shall be located, constructed and maintained by the Company: (i) in as safe and secure a condition or manner as reasonably possible, (ii) so as not to interfere with the safety and convenience of ordinary travel along and over Public Ways, and (iii) so as not to disrupt or interfere with the normal use or operation of any Public Ways, Public Ground or the City Utility System. Gas Facilities may only be located on Public Ground as determined by the City in its sole discretion. The Company's construction, reconstruction, operation, repair, maintenance, location and relocation of Gas Facilities shall be subject to the terms of this Ordinance and such other regulations of the City consistent with authority granted the City to manage its Public Ways and Public Grounds under state law, to the extent not inconsistent with a specific term of this Ordinance.

**Subd. 2. Construction; Maintenance; Repairs.** Whenever the Company desires to open or disturb any Public Way or Public Ground for the purpose of constructing, maintaining, or repairing Gas Facilities, it shall give the City reasonable advance Notice, but not less than ten (10) business days, by filing a written Notice with the City Administrator. In any case, the Company shall not commence such work before obtaining any applicable permit for which the City may impose a reasonable fee, or other appropriate written consent from the City. The Company shall not, during the progress of the work, endanger or unnecessarily obstruct the passage of traffic or the normal and customary use of the Public Ways and Public Ground. During the progress of such work, the Company shall keep the affected Public Ways or Public Ground guarded in order to avoid accidents to persons or property. All work performed by the Company shall comply with all applicable federal, state, and local laws, rules, and regulations.

**Subd. 3. Emergencies.** The requirements for obtaining permits from the City pursuant to Section 5.2 shall not apply if (i) an emergency exists requiring the immediate repair of Gas Facilities and (ii) the Company gives telephone notice to the City before, if reasonably possible, commencement of the emergency repair. Within two (2) business days after commencing the repair, the Company shall apply for any required permits and pay any required fees.

**Subd. 4. Restoration.** Following the completion of any work, the Company shall promptly and diligently restore the affected Public Ways and/or Public Ground to as good a

condition as before the work commenced, and shall warrant the work for one (1) years thereafter. If the Company fails to promptly restore such Public Ways and/or Public Ground within thirty calendar (30) days of Notice by the City, the City may engage an independent contractor at the expense of the Company to perform the restoration of the Public Ways and/or Public Ground as required under this Section. The Company shall pay to the City upon demand the cost to the City of affecting such restoration including the City's administrative expenses and overhead.

**Subd. 5. Avoidance of Damage.** The Company must take reasonable measures to prevent the Gas Facilities from causing damage to persons or property. The Company must take reasonable measures to protect the Gas Facilities from damage that could be inflicted on the Gas Facilities by persons, property, or the elements. The Company must take protective measures when the City performs work near the Gas Facilities, if given reasonable Notice by the City of such work prior to its commencement.

**Subd. 6. Field Locations.** The Company shall provide field locations for all its underground Gas Facilities when requested by the City within a reasonable period of time. The period of time will be deemed reasonable if it meets the requirements of the one call excavation notice system as now provided in Minnesota Statutes, chapter 216D (commonly known as of the Effective Date as the "Gopher State One Call" system). The Company must promptly provide available mapping information for any of its underground Gas Facilities, subject to the Homeland Security Act or other applicable laws protecting confidential or proprietary information.

**Subd. 7. Permit Required.** The Company may not open or disturb the surface of any Public Way or Public Ground without first having obtained a permit from the City. Company will comply with all permit conditions established by the City. The permit conditions and fees imposed on the Company may not be more burdensome than those imposed on other utilities for similar facilities or work, however, when establishing permit fees, the City may take into account the renewal dates of existing franchises and whether the Company is also paying a franchise fee to the City. The Company may, however open and disturb the surface of any Public Way or Public Ground without a permit if (i) an emergency exists requiring the immediate repair of Gas Facilities and (ii) the Company gives notice to the City before, if possible, commencement of the emergency repair. Within two (2) business days after commencing the repair, the Company must apply for any required permits and pay the required fees.

**Subd. 8. Restoration.** After completing work requiring the opening of a Public Way or

Public Ground, the Company must restore the same, including paving and its foundation, to the condition specified in the permit and maintain the restored areas in good condition for one (1) year thereafter. The work must be completed as promptly as weather permits. If the Company does not promptly perform and complete the work, remove all dirt, rubbish, equipment and material, and restore the Public Way or Public Ground, the City may, after demand to the Company to cure and the passage of a reasonable period of time not less than thirty calendar days following the demand, make the restoration at the expense of the Company. The Company must pay to the City the cost of such work done for or performed by the City, including administrative expense and overhead. This remedy is in addition to any other remedies available to the City for noncompliance with this section.

**Subd. 9. Tree Trimming.** Subject to such procedures, regulation and supervision as the Council may establish, the Company may, at its cost, trim all trees and shrubs in the Public Ways located within the Company Service Area to the extent the Company finds it necessary to avoid interference with the proper construction, operation, repair and maintenance of any of the Company's Gas Facilities installed or maintained hereunder. Prior to any tree trimming, the Company will provide to the City a plan addressing the aesthetic impact of the proposed tree trimming.

**Subd. 10. Notice of City Improvements.** The City will give the Company ninety (90) days advance Notice of plans for improvements to Public Ways and Public Ground in the Company Service Area where the City has reason to believe that the Company's Gas Facilities may affect or be affected by such improvements. The Notice will contain: (i) the nature and character of the improvements, (ii) the Public Ways and/or Public Ground upon which the improvements are to be made, (iii) the extent of the improvements, (iv) the time when the City will start the work, and (v) if more than one Public Way or parcel of Public Ground is involved, the order in which the work is to proceed.

**1310.05. Gas Facilities Relocation.**

**Subd. 1. Relocation.** In the event the City reasonably determines that it is necessary for the Company to move any part of its Gas Facilities because the City has determined to change, move or improve its Public Ways when necessary to prevent interference and not merely for convenience of the City or that the Gas Facilities have become or will become a substantial impairment to the existing or imminent public use of Public Ground, upon reasonable Notice by

the City to the Company, then the Company will move its Gas Facilities at its sole cost. The City shall consider reasonable alternatives in designing its public works projects so as not to arbitrarily cause the Company unreasonable additional expense in exercising its authority under this Subdivision. The Company is not required to remove or relocate its facilities from a right of way that has been vacated or altered in favor of a non-governmental entity unless and until the reasonable cost to do so are first paid to the Company. This Subdivision shall not constitute a taking by the City nor be construed as a waiver or modification of any easement or prescriptive rights acquired by the Company independent of and without reliance by the Company on this Franchise.

**Subd. 2. No Release of Liability.** Nothing contained herein shall relieve any third party from liability arising out of their failure to exercise reasonable care to avoid injuring the Company's Gas Facilities while performing any work connected with grading, regrading or changing the line of any Public Way or with any construction on or adjacent to any Public Way; provided, however, this Subdivision shall not limit the City's rights to indemnification under Sub-Section 1310.06 nor shall the City in any way be liable to the Company for claims arising from the negligence of any third party.

**Subd. 3. Projects with State or Federal Funding.** Relocation, removal, or rearrangement of any Gas distribution facilities owned by the Company made necessary because of the extension into or through the City of a federally-aided highway project shall be governed by the provisions of §161.46 of Minnesota Statutes. It is understood that the right herein granted to the Company is a valuable right and the City shall not order the Company to remove, or relocate its facilities when a public way is vacated, improved, or realigned because of a renewal or a redevelopment plan which is financially subsidized in whole or in part by the United States or any agency thereof, unless the reasonable non-betterment costs of such relocation and the loss and expense resulting therefrom are first paid to the Company, but the City need not pay those portions of such items for which reimbursement to it is not available.

**1310.06. Indemnification.**

**Subd. 1. Indemnification.** If at any time any claim of any kind is made against the City for injury to persons or property arising from the acts or failure to act by the Company, its agents, servants, or employees in connection with the operations of the Company under and pursuant to this Franchise, the Company shall indemnify, defend and hold harmless the City, its agents,



servants or employees from any and all such claims, including, but not limited to, reimbursement of any reasonable attorneys fees and costs and expenses the City may incur in handling, denying, or defending such claims. The Company's obligation to indemnify, defend and hold harmless the City shall not extend to any injury to persons or property caused by the negligent act or failure to act by the City or any actions taken by the Company pursuant to directions of the City if performed within the scope of the City's directions without negligence by the Company. The Company will have complete control of such litigation. This Section is not a waiver of any defense or immunity otherwise available to the City pursuant to the Minnesota Municipal Tort Claims Act, or otherwise. The Company in defending any action shall be entitled to assert every defense or immunity that the City could itself assert in its own behalf. The Company's obligations under this Section shall survive the expiration, amendment, or termination of this Ordinance.

**Subd. 2. Insurance.** Before the Effective Date, the Company shall furnish the City a summary of insurance, if any, carried by the Company, or of its self-insured status, in either case demonstrating adequate protection to the City from any and all obligations, liabilities, or claims of any nature whatsoever, growing out of the operation, construction, and maintenance of its Gas Facilities within the City. The Company shall maintain such insurance coverage at all times during this Franchise.

**Subd. 3. Compliance with Laws; Hazardous Substances.** In its operation under this Ordinance, the Company shall observe all federal, state and local laws, rules, regulations and orders with respect to the transmission, distribution, transformation or furnishing of Gas energy and the handling of materials, substances and wastes deemed toxic or hazardous to health, natural resources or the environment (collectively, "Hazardous Substances"). The Company shall remove or remediate any Hazardous Substances located on, in or surrounding its Gas Facilities or caused to be located on, in or surrounding the Public Ways and Public Grounds or elsewhere in the City in compliance with all applicable laws, regulations and lawful government orders, and pay or cause to be paid all costs associated therewith. The indemnification terms and conditions of Sub-section 1310.06, Subd.1, shall apply to all claims made against the City by any Person, including any governmental agency, who or which asserts any right to costs, damages or other relief based upon the terms and conditions imposed upon the Company under this Subdivision or which arise from or are related to the Company's acts or failure to act in compliance with any law, rule, regulation or lawful order governing Hazardous Substances.

**1310.07. Abandoned Facilities.** The Company shall comply with City ordinances and Minnesota Statutes, Section 216D.01 et seq., as they may be amended from time to time.

**1310.08. Rates and Service.** The Gas service provided and the rates charged by the Company for Gas service, as of the Effective Date, are subject to the jurisdiction of the Commission as provided in Minnesota Statutes, chapter 216B. In the event the Company shall determine after the Effective Date to change its rates or terms and conditions of Gas service, the City recognizes they will receive advance Notice of such proposed action via the Minnesota Public Utility Commission regulatory process.

**1310.09. Franchise Fee.**

**Subd. 1. Franchise Fee.** In exchange for the franchise granted herein, Grantee (Minnesota Energy Resources) shall collect from its customers and pay to the Grantor an amount based on the following fee schedule after adjustment for the net write-off of uncollectible accounts and corrections of bills theretofore rendered:

<b>CUSTOMER CLASS</b>	<b>FEE</b>
Residential	\$3.00/Month/Customer
Commercial Firm	\$3.00/Month/Customer
Commercial Interruptible	\$3.00/Month/Customer
Industrial Firm	\$3.00/Month/Customer
Industrial Interruptible	\$3.00/Month/Customer
Transportation	\$3.00/Month/Customer

The amount paid by Grantee shall be in lieu of, and Grantee shall be exempt from, all other occupation, license, excise or right-of-way permit fees or taxes which the City of Silver Bay may impose for the rights and privileges herein granted or for the privilege of doing business within the City of Silver Bay, and in the event any such fee, charge, license, tax or assessment shall be imposed by the Grantor, the payment to be made in accordance with the provisions of this section shall be reduced in an amount equal to the annual burden of such fee, charge, license, tax or assessment imposed upon the Grantee. Ad valorem property taxes imposed generally upon all real and personal property within the City of Silver Bay shall not be deemed to affect the obligation of the Grantee under this section.

**Subd. 2. Exemption.** No franchise fee will imposed upon: (i) a meter if the City has notified the Company that such meter services property owned or leased by the City; or (ii) a meter servicing property owned or leased by the Company.

**Subd. 3. Calculation of the Fee.** The fee is an account-based fee on each premise and not a meter-based fee. In the event that an entity covered by this ordinance has more than one meter at a single premise, but only one account, only one fee shall be assessed to that account. If a premise has two or more meters being billed at different rates, the Company may have an account for each rate classification, which will result in more than one franchise fee assessment for natural gas service to that premise. If the Company combines the rate classifications into a single account, the franchise fee assessed to the account will be the largest franchise fee applicable to a single rate classification for energy delivered to that premise. In the event any entities covered by the ordinance have more than one premise, each premise shall be subject to the appropriate fee. In the event a question arises as to the proper fee amount for any premise, the Company's manner of billing for energy used at all similar premises in the city will control.

**Subd. 4. Collection of the Fee.** Implementation, collection and payment of the franchise fee are subject to any additional requirements imposed by order of the Minnesota Public Utility Commission. The first franchise fee shall be collected with the Company's first full billing cycle following the issuance of a written order from the Minnesota Public Utilities Commission authorizing the Company to incorporate the franchise fee imposed by this Ordinance/Franchise into its rate schedule. Company shall use its best efforts to obtain the authorization of the Minnesota Public Utilities Commission.

Grantee shall list the local franchise fee collected from customers as a separate item on bills for utility service issued to customers. If at any time the Minnesota Public Utilities Commission, or other authority having proper jurisdiction, prohibits such recovery, then Grantee will no longer be obligated to collect and pay the franchise fee herein contemplated. In addition, the Company will notify the City, and upon approval by the City, the Company may discount or reduce the fee payable for natural gas delivered to a specific customer of the Company when it is required to reduce the franchise fee to retain the business of that customer. Modification or reduction of the franchise fee should occur if the fee would cause the customer to cease purchase or transportation deliveries of natural gas from the Company by installing equipment to access the natural gas supply not subject to the City's franchise fee.

**Subd. 5. Payment of the Fee.** The franchise fee shall be payable by the Company quarterly and shall be based on the amount collected by Company during complete billing months during the period for which payment is to be made by imposing a surcharge equal to the designated franchise fee for the applicable customer classification in all customer billings for natural gas service in each class. The payment shall be due the last business day of the month following the period for which the payment is made. No franchise fee shall be payable by Company if Company is legally unable to first collect an amount equal to the franchise fee from its customers in each applicable class of customers by imposing a surcharge in Company's applicable rates for natural gas service. Company may pay the City the fee based upon the surcharge billed subject to subsequent reductions to account for uncollectibles, refunds and correction of erroneous billings. The Company shall provide at the time of each payment a statement summarizing how the franchise fee payment was determined. Including information showing any adjustments to the total surcharge billed in the period for which the payment is being made to account for uncollectibles, refunds or error corrections. Company shall make its records available for inspection by the City at reasonable times.

**Subd. 6. Additional or Amended Fee.** During the term of the Ordinance/Franchise hereby granted, and in addition to other fees being imposed or that the City has the right to impose, the City has the right to alter, amend or repeal the franchise fee imposed in Section 1330.09 hereof. The altered or amended franchise fee must be imposed by a separate ordinance adopted by the City Council, which ordinance may not be adopted until at least ninety (90) days after Notice enclosing such proposed ordinance has been served upon the Company by certified mail. The fee will not become effective until ninety (90) days after adoption of the ordinance by the City Council.

**Subd. 7. Restricted Use of Franchise Fee.** The City has chosen to restrict the use of the franchise fees to the maintenance, repair, and/or replacement of city streets, curbs, gutters, sidewalks, and public parking areas.

**1310.10. Default and Election of Remedies.**

If the Company shall be in default in the performance of any of the material terms and conditions of this franchise, and shall continue in default for more than thirty (30) days (or fails to initiate the cure of the default within said period and diligently pursue said cure, if the cure of the default cannot reasonably be accomplished within said 30 days) after receiving Notice from the City of such default, the City may elect to cure such default and charge the Company for the costs and

expenses incurred by the City for the cure thereof.

No remedy provided hereunder shall be deemed an exclusive remedy and the election of any such remedy shall not bar pursuit of any other remedy or any combination thereof, or subsequent seeking of the same remedy for other damages or otherwise, whether available hereunder or existing at law or in equity. No waiver of any breach of any covenant, condition or agreement herein contained shall operate as a waiver of any subsequent breach thereof.

**1310.11. General Provisions of Franchise.**

**Subd. 1. Governing Law.** This Franchise is granted and is intended to be performed in the State of Minnesota and shall be construed and enforced in accordance with the laws of the State of Minnesota. The Company shall be subject to personal jurisdiction in the State of Minnesota. All actions related to this franchise or its enforcement shall be venued in the District Court of the State of Minnesota within which venue the City is located.

**Subd. 2. Right to Repeal.** If any clause, sentence or section of this Franchise is deemed invalid by any judicial, regulatory or legislative body having proper jurisdiction, the remaining provisions shall not be affected.

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

**Subd. 4. Assignment.** Company shall provide thirty (30) days' advance written notice to City of any sale, assignment, or transfer of this Ordinance/Franchise. The notice must provide the name, address, contact information of any successor to the Company. Any successor entity to the Company is subject to all of the terms and conditions of this Ordinance/Franchise and prior to such sale, assignment or transfer being effective such successor entity must provide City with a written acknowledgment and agreement that it is bound by the terms and provisions of this Ordinance/Franchise.

**1310.12. Acceptance by the Company.**

**Subd. 1. Acceptance by the Company.** The Company shall, within sixty (60) days after passage and publication of this franchise or any amendment thereto, file with the City Administrator in writing its acceptance or rejection as provided in Subd. 2. If such acceptance is

not filed or if a rejection is filed within said period, the Company, by its continuing operations, shall be deemed to have accepted the terms and conditions of this Franchise or any amendment hereto, except with respect to such particulars as it may successfully challenge under the procedures specified in Subd. 2.

**Subd. 2. Rejection Procedures.** A rejection of this Franchise or any amendment hereto may be made by the Company only upon the grounds that the terms and conditions hereof or of such amendment exceed the lawful authority of the City under the Constitutions or Laws of the United States or the State of Minnesota or are otherwise unlawful. Any rejection shall be submitted in writing to the City, stating with particularity the points and authorities of law upon which the Company relies. If the City fails to amend this Franchise or otherwise satisfy the Company's objections as stated within sixty (60) days of its receipt of the Company's rejection, the Company shall have the right thereafter to seek appropriate judicial or administrative relief based solely upon those provisions it has alleged are unlawful in its rejection notice. If the Company fails to initiate such legal action within sixty (60) days from the expiration of the aforementioned thirty (30) day period provided for the City's amendment or cure, the Company shall be deemed to have waived its objections and to have accepted the terms of this Franchise or any amendment hereto.

**1310.13. Publication Expense.** The expense of any publication of this franchise required by law shall be paid by Company.

**1310.14. Previous Gas Franchise Repealed.** The prior Gas Franchise granted to Minnesota Energy Resources, the predecessor to the Company herein, pursuant to Silver Bay City Code Section 1310, is hereby repealed and superseded by this Section 1310 Gas Franchise (2013).

### **Section 1320A - CABLE SERVICES FRANCHISE RENEWAL**

This Franchise ("Franchise") is between the City of Silver Bay, Minnesota, hereinafter referred to as "the Franchising Authority" and Mediacom Minnesota LLC, a limited liability company duly organized and validly existing under the laws of the State of Delaware hereinafter referred to as "the Grantee."

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

forth herein.

**1320A.01. Definition of Terms.**

For the purpose of this Franchise, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular number include the plural number. The word "may" is directory and discretionary and not mandatory: the words "shall" and "will" are mandatory and not merely directory or discretionary.

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" is the lowest priced tier of Cable Service that includes the retransmission of local broadcast television signals and unless otherwise stated herein, 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

C. "Cable Act" means Title VI of the Cable Act of 1934, as amended.

D. "Cable Services" shall mean (1) the one-way transmission to Subscribers of (a) video programming, or (b) other programming service and (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service. Cable Service as defined herein shall not be inconsistent with the definition set forth in 47 U.S.C. § 522 (6).

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. "Cable System" shall mean the Grantee's facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the Service Area.

G. "Drop" means the cable that connects the ground block on the Subscriber's

residence to the nearest feeder cable of the System.

H. "FCC" means Federal Communications Commission, or successor governmental entity thereto.

I. "Franchising Authority" or "City" means the City of Silver Bay, Minnesota.

J. "Franchise Fee" or includes any tax, fee or assessment of any kind required by this agreement and collected from subscribers.

K. "Grantee" means Mediacom Minnesota, LLC or the lawful successor, transferee, or assignee thereof.

L. "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) late fees and returned check fees, 3) installation and reconnecting fees, 4) upgrade and downgrade fees, 5) local, state and national advertising revenue, 6) home shopping commissions, 7) equipment rental fees, and 8) 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).

M. "PEG" means public, educational and government access video programming.

N. "Person" means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity.

O. "Public Way" shall mean the surface of, and the space above and below any public street, highway freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right-of-way including, but not limited to, public utility easements dedicated utility strips, or rights-of-way dedicated for compatible uses now or hereafter held by the Franchising Authority in the Service Area which shall entitle the Grantee to the use thereof for the purpose of installing, operating repairing and maintaining the Cable System.

P. "Service Area" means the present boundaries of the Franchising Authority and the City of Silver Bay by executed line extension agreement and shall include any additions thereto by annexation or other legal means subject to the exceptions in subsection 3.9.

Q. "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.

R. "Standard Installation" is defined as 125 feet from the nearest tap to the Subscriber's terminal.

S. "Subscriber" means a Person who lawfully receives Cable Service of the Cable System with the Grantee's express permission.

### **1320A.02. Grant of Franchise.**

**Subd. 2.1. Grant.** The Franchising Authority hereby grants to the Grantee a nonexclusive Franchise which authorizes the Grantee to construct and operate a Cable System in, along, among, upon, across above over, under, or in any manner connected with Public Ways within the Service Area. and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Public Way such facilities and equipment as may be necessary or appurtenant to the Cable System for the transmission and distribution of Cable Services, data services, information and other communications services or for any other lawful purposes.

**Subd. 2.2. Term.** This Franchise shall be for a term Ten (10) years and shall expire on \_\_\_\_\_, 2026.

**Subd. 2.3. Other Ordinances.** The Grantee agrees to comply with the terms of any lawfully adopted generally applicable local ordinance to the extent that the provisions of the ordinance do not have the effect of limiting the benefits or expanding the obligations of the Grantee that are granted by this Franchise. Neither party may unilaterally alter the material rights and obligations set forth in this Franchise. In the event of a conflict between any ordinance and this Franchise, the Franchise shall control.

**Subd. 2.4. Other Authorizations.** The Franchising Authority shall not permit any person to provide services similar to those provided by the Grantee in the Service Area without first having secured a non-exclusive franchise from the Franchising Authority. The Franchising Authority agrees that any grant of additional franchises or other authorizations including OVS authorizations by the Franchising Authority to provide services similar to those provided by the Grantee pursuant to this Agreement to any other entity shall cover the entire Service Area and shall not be on terms and conditions more favorable or less burdensome to the grantee of any such additional franchise or other authorization than those which are set forth herein. In any renewal

of this Franchise, the Franchising Authority, should it seek to impose increased obligations upon the Grantee, must take into account any additional franchise(s) or authorizations previously granted and find that the proposed increased obligations in the renewal, are not more burdensome and/or less favorable than those contained in any such additional franchise(s) or authorizations. In addition to the foregoing, the Franchising Authority in consideration of the benefits conferred upon it by the Grantee's investment in the cable related needs and interests of the Franchising Authority the Franchising Authority agrees that neither it nor any utility under its control and/or ownership commences provision of Cable Service in any part of Grantee's Service Area.

**Subd. 2.5. 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. 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.

**Subd. 2.6. Limitations of Franchise.** This Franchise shall be nonexclusive and complies with franchise standards contained in Minnesota Statutes, Chapter 238. No privilege or exemption shall be granted or conferred by the Franchise granted hereunder except those specifically prescribed herein. 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. This 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 5537 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. 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. 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. 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. 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.

**Subd. 2.7. Performance Bond.** 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 (\$50,000.00) ("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. Neither the provisions of this section, nor 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. 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.

**Subd. 2.8. Insurance.** 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 Five Hundred and No/100 Dollars (\$500,000.00) per occurrence or combined single limit and One Million and No/100 Dollars (\$1,000,000.00) for excess liability coverage. Grantee shall furnish to City a certificate of insurance evidencing such coverage.

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.

The certificate of insurance mentioned in the foregoing paragraph shall name the City, its' officers, boards, commissions, agents and employees, as additional insureds and shall contain a provision that a written notice of any cancellation or failure to renew said policy shall be delivered to the City within 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.

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.

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.

**Subd. 2.8. 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 or at a minimum, in a manner consistent with Federal and State regulations. 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.

### **1320A.03. Standards of Service.**

**Subd. 3.1. Conditions of Occupancy.** The Cable System installed by the Grantee pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of Public Ways and with the rights and reasonable convenience of property owners who own property that adjoins any of such Public Ways.

**Subd. 3.2. Use and Restoration of Public Ways.** Grantee shall not dig into or disturb the surface of and Public Way without obtaining prior written permission from the City Street Superintendent. If during the course of the Grantee's construction, operation, or maintenance of the Cable System there occurs a disturbance of any Public Way by the Grantee, Grantee shall replace and restore the condition of the Public Way to a condition reasonably comparable to existing immediately prior to such disturbance.

**Subd. 3.3. Relocation for the Franchising Authority.** Upon its receipt of reasonable advance written notice, to be not less than ten (10) business days, the Grantee shall protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way, any property of the Grantee when lawfully required by the Franchising Authority by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of public structures or improvements which are not used to compete with the Grantee's services. The Grantee shall in all cases have the right of abandonment of its property.

**Subd. 3.4. Relocation for a Third Party.** The Grantee shall, on the request of any Person holding a lawful permit issued by the Franchising Authority, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way as necessary any property of the Grantee, provided: (A) the expense of such is paid by said Person benefiting from the relocation, including, if required by the Grantee, making such payment in advance; and (B) the Grantee is given reasonable advance written notice to prepare for such changes. For purposes of this subsection "reasonable advance written notice" shall be no less than thirty (30) business days in the event of a temporary relocation, and no less than one hundred twenty (120) days for a permanent relocation.

**Subd. 3.5. Trimming of Trees and Shrubbery.** The Grantee shall have the authority to trim trees or other natural growth in order to access and maintain the Cable System.

**Subd. 3.6. Safety Requirements.** Construction, operation and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with generally applicable federal, state, and local regulations and the National Electric Safety Code.

**Subd. 3.7. Underground Construction.** In those areas of the Service Area where all of the transmission or distribution facilities of the respective public utilities providing telephone

communications and electric services are underground, the Grantee likewise shall construct, operate, and maintain its Cable System underground. Nothing contained in this subsection shall require the Grantee to construct operate, and maintain underground any ground-mounted appurtenances.

**Subd. 3.8. Access to Open Trenches.** The Franchising Authority agrees to include the Grantee in the platting process for any subdivision. At a minimum, the Franchising Authority agrees to require as a condition of issuing a permit for open trenching to any utility or developer that (A) the utility or developer give the Grantee at least ten (10) business days advance written notice of the availability of the open trench, and (B) that the utility or developer provide the Grantee with reasonable access to the open trench. Notwithstanding the foregoing, the Grantee shall not be required to utilize any open trench.

**Subd. 3.9. Required Extensions of the Cable System.** Grantee agrees to provide Cable Service to all residences in the Service Area subject to the density requirements specified in this subsection. Whenever the Grantee receives a request for Cable Service from a potential Subscriber in an unserved area contiguous to Grantee's existing distribution facilities where there are at least 10 residences within 1320 cable-bearing strand feet (one-quarter cable mile) from the portion of the Grantee's trunk or distribution cable which is to be extended, it shall extend its Cable System to such Subscribers at no cost to said Subscribers for the Cable System extension, other than the published Standard/non-Standard Installation fees charged to all Subscribers. Notwithstanding the foregoing, Grantee shall have the right, but not the obligation, to extend the Cable System into any portion of the Service Area where another operator is providing Cable Service, into any annexed area which is not contiguous to the present Service Area of the Grantee, or into any area which is financially or technically infeasible due to extraordinary circumstances, such as a runway or freeway crossing.

**Subd. 3.10. Subscriber Charges for Extensions of the Cable System.** No Subscriber shall be refused service arbitrarily. However, if an area does not meet the density requirements of subsection 3.9 above, the Grantee shall only be required to extend the Cable System to Subscriber(s) in that area if the Subscriber(s) are willing to share the capital costs of extending the Cable System.

Specifically, the Grantee shall contribute a capital amount equal to the construction cost per mile, multiplied by a fraction whose numerator equals the actual number of residences per

1320 cable-bearing strand feet from the Grantee's trunk or distribution cable, and whose denominator equals 10. Subscribers who request service hereunder shall bear the remaining cost to extend the Cable System on a pro rata basis. The Grantee may require that payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance. Subscribers shall also be responsible for any Standard/non-Standard Installation charges to extend the Cable System from the tap to the residence.

**Subd. 3.11. Cable Service to Public Buildings.** 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 A attached hereto and made a part hereof, and accredited public and private school buildings subsequently designated by City. 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.

Additional outlets in any of the locations identified on Exhibit A will be installed by Grantee at the rate card price current for the City of Silver Bay customers. Alternatively, said institutions may add outlets at their 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.

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).

**Subd. 3.12. Live Broadcast Facilities and Two-Way Network.** 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 B attached hereto and made a part hereof. The City shall be responsible for all terminal equipment at City Hall and at each location listed in Exhibit B, including any optical transmitters within the City facilities and all necessary production equipment the City may choose to utilize. 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 head end 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 Subdivision 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.

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

**Subd. 3.14. 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 business (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.

**Subd. 3.16. Channel Capacity.** Channel Capacity Grantee shall maintain for the term of this Franchise a System cable of providing voice, Video, and data services. The Franchising Authority acknowledges that this Franchise Agreement and its requirements herein only apply to the Grantee's delivery of video services.

**1320A.04. Regulation by the Franchising Authority.**

**Subd. 4.1. Franchise Fee.**

- a. The Grantee shall pay to the Franchising Authority a franchise fee of three percent (3%) of annual Gross Revenues (as defined in subsection 1.1 of this Franchise). In accordance with the Cable Act, the twelve (12) month period applicable under the Franchise for the computation of the franchise fee shall be a calendar year. The franchise fee payment shall be due quarterly and payable within 60 days after the close of the preceding calendar year. Each payment shall be accompanied by a brief report prepared by a representative of the Grantee showing the basis for the computation. After the three years from Grantee's acceptance of this Agreement, the Franchising Authority, upon vote of the City Council and ninety (90) days' notice to Grantee, may increase the Franchise Fee up a maximum of Five percent (5%) of annual Gross Revenues.
- b. Limitation on Franchise Fee Actions. The period of limitation for recovery by the Franchising Authority of any franchise fee payable hereunder shall be three (3) years from the date on which payment by the Grantee is due to the Franchising Authority.

**Subd. 4.2. Rates and Charges.** The Franchising Authority may regulate rates for the provision of Basic Cable Service and equipment as expressly permitted by federal law.

**Subd. 4.3. Renewal of Franchise.**

- a. The Franchising Authority and the Grantee agree that any proceedings undertaken by the Franchising Authority that relate to the renewal of the Grantee's Franchise shall be

- governed by and comply with the renewal provisions of state and federal law.
- b. In addition to the procedures set forth in the Cable Act, the Franchising Authority agrees to notify the Grantee of all of its assessments regarding the identity of future cable-related community needs and interests as well as the past performance of the Grantee under the then current Franchise term. The Franchising Authority further agrees that such assessments shall be provided to the Grantee promptly so that the Grantee has adequate time to submit a proposal pursuant to the Cable Act and complete renewal of the Franchise prior to expiration of its term.
  - c. Notwithstanding anything to the contrary set forth in this subsection 4.3, the Grantee and the Franchising Authority agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment in accordance with the provisions of federal law, the Franchising Authority and the Grantee may agree to undertake and finalize informal negotiations regarding renewal of the then current Franchise and the Franchising Authority may grant a renewal thereof.
  - d. The Grantee and the Franchising Authority consider the terms set forth in this subsection 4.3 to be consistent with the express renewal provisions of the Cable Act.

**Subd. 4.4. Conditions of Sale.** If a renewal or extension of the Grantee's Franchise is denied or the Franchise is lawfully terminated and the Franchising Authority either lawfully acquires ownership of the Cable System or by its actions lawfully effects a transfer of ownership of the Cable System to another party, any such acquisition or transfer shall be at the price determined pursuant to the provisions set forth in Section 627 of the Cable Act.

The Grantee and the Franchising Authority agree that in the case of a final determination of a lawful revocation of the Franchise, the Grantee shall be given at least twelve (12) months to effectuate a transfer of its Cable System to a qualified third party. Furthermore, the Grantee shall be authorized to continue to operate pursuant to the terms of its prior Franchise during this period. If at the end of that time, the Grantee is unsuccessful in procuring a qualified transferee or assignee of its Cable System which is reasonably acceptable to the Franchising Authority, the Grantee and the Franchising Authority may avail themselves of any rights they may have pursuant to federal or state law. It is further agreed that the Grantee's continued operation of the Cable System during the twelve (12) month period shall not be deemed to be a waiver, nor an

extinguishment of, any rights of either the Franchising Authority or the Grantee.

**Subd. 4.5. Transfer of Franchise.** The Grantee's right, title or interest in the Franchise shall not be sold, transferred, assigned or otherwise encumbered, other than to an entity controlling, controlled by or under common control with the Grantee, without prior written notice to the Franchising Authority. No such notice shall be required however, for a transfer in trust, by mortgage, by other hypothecation or by assignment of any rights, title, or interest of the Grantee in the Franchise or Cable System in order to secure indebtedness.

**Subd. 4.6. PEG Access.** Grantee shall provide, at no cost to the City or Persons who submit programming, up to three (3) Channels for PEG access use. Initially, two (2) Channels shall be designated for public, educational and government access programming as determined by the City. In addition, one (1) additional Channel shall be designated for educational access or regional programming upon agreement of the City and Grantee that there is sufficient support and programming to generate programming 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 such purpose. 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.

Grantee will comply, at a minimum, with the following requirements regarding access Channels: 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 One Thousand and No/ 100 Dollars (\$ 1,000.00) 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.

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. Grantees responsibility for signal quality begins at the PEG access Channels' modulators output, ending at

the Subscriber's ground block. All access Channels shall be transmitted to Subscribers on the Basic Cable Service tier, unless otherwise agreed to by the City. 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.

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.

The City's PEG Channels will continue to be carried along 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.

Grantee shall collect, on behalf of City, a per Subscriber fee of no more than Fifty Cents (\$.50) per month solely to fund PEG access capital related expenditures (hereinafter "PEG Capital Access Fee"). Thereafter, the City may upon ninety (90) days' notice to Grantee request an adjustment of the fee up to one-dollar (\$ 1) per month to support growth in PEG programming. Such request cannot occur more than annually. 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).

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 above.

**Subd. 4.7. PEG Access Commercialism.** Access channel is a channel made available to the Franchising Authority by Grantee for the purpose of cablecasting non-commercial programming by Franchising Authority residents, Franchising Authority administration and educational institutions. The Franchising Authority agrees not to use the access channel to provide

commercial or revenue-generating services or services that may compete, directly or indirectly, with services provided by the Grantee provided, however, that the Franchising Authority may cablecast acknowledgments of funding sources and the underwriting of programming costs. Such acknowledgments will be deemed non-commercial if they are within the standards for underwriting applicable to the Public Broadcasting Service (PBS) or the standards necessary to maintain tax-exempt status within the applicable regulations of the Internal Revenue Service. Programming shall not lose its non-commercial character by reason of including public or charitable fund-raising events or activities or donor and underwriting announcements reflecting funding provided by for-profit or non-profit entities for PEG programming in accordance with the provisions of 47 C.F.R. 73.621 of the FCC's Rules.

**1320A.05. Books and Records.** The Grantee agrees that the Franchising Authority upon thirty (30) days written notice to the Grantee and no more than once annually may review such of its books and records at the Grantee's business office during normal business hours and on a non-disruptive basis as is reasonably necessary to ensure compliance with the terms of this Franchise. Such notice shall specifically reference the subsection of the Franchise that is under review so that the Grantee may organize the necessary books and records for easy access by the Franchising Authority. The Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years. Notwithstanding anything to the contrary set forth herein, the Grantee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature nor disclose books and records of any affiliate which is not providing Cable Service in the Service Area. The Franchising Authority agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof. The Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act.

**1320A.06. Enforcement and Termination of Franchise.**

**Subd. 6.1. Notice of Violation.** In the event that the Franchising Authority believes that the Grantee has not complied with the any material term of the Franchise, the Franchising Authority shall informally discuss the matter with Grantee. If these discussions do not lead to resolution of the problem the Franchising Authority shall notify the Grantee in writing of the exact nature of such alleged noncompliance.

**Subd. 6.2. The Grantee's Right to Cure or Respond.** The Grantee shall have thirty (30) days from receipt of the notice described in subsection 7.1: (A) to respond to the Franchising Authority, contesting the assertion of such noncompliance or (B) to cure such default, or (C) in the event that, by the nature of such default it cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the Franchising Authority of the steps being taken and the projected date that they will be completed.

**Subd. 6.3. Public Hearing.** In the event that the Grantee fails to respond to the notice described in subsection 7.1 pursuant to the procedures set forth in subsection 7.2, or in the event the alleged default is not remedied within thirty (30) days or the date projected pursuant to 7.2(C) above, if it intends to continue its investigation into the default, the Franchising Authority shall schedule a public hearing. The Franchising Authority shall provide the Grantee at least thirty (30) days prior written notice of such hearing, which specifies the time, place and purpose of such hearing, and provide the Grantee the opportunity to be heard.

**Subd. 6.4. Enforcement.** Subject to applicable federal and state law, in the event the Franchising Authority, after the hearing set forth in subsection 6.3, determines that the Grantee is in material default of any provision of the Franchise the Franchising Authority may:

- a. Commence an action at law for monetary damages or seek other equitable relief; or,
- b. In the case of repeated or ongoing substantial non-compliance with a material term or terms of the Franchise, seek to revoke the Franchise in accordance with subsection 6.5.

**Subd. 6.5. Revocation.** Should the Franchising Authority seek to revoke the Franchise after following the procedures set forth in subsections 6.1 to 6.4 above, the Franchising Authority shall give written notice to the Grantee of its intent. The notice shall set forth the exact nature of the repeated or ongoing substantial noncompliance with a material term or terms of the franchise. The Grantee shall have ninety (90) days from such notice to object in writing and to state its reasons for such objection. In the event the Franchising Authority has not received a satisfactory response from the Grantee, it may then seek termination of the Franchise at a public hearing. The Franchising Authority shall cause to be served upon the Grantee at least thirty (30) days prior to such public hearing, a notice specifying the time and place of such hearing and stating its intent to revoke the Franchise.

At the designated hearing. Grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce relevant evidence, to require the production of evidence, to compel the relevant testimony of the officials, agents, employees or consultants of the Franchising Authority, to compel the testimony of other persons as permitted by law and to question witnesses. A complete verbatim record and transcript shall be made of such hearing.

Following the hearing, the Franchising Authority shall determine whether or not the Franchise shall be revoked. If the Franchising Authority determines that the Franchise shall be revoked the Franchising Authority shall promptly provide Grantee with its decision in writing. The Grantee may appeal such determination of the Franchising Authority to an appropriate court which shall have the power to review the decision of the Franchising Authority de novo. Grantee shall be entitled to such relief as the court finds appropriate. Such appeal must be taken within sixty (60) days of Grantee's receipt of the determination of the Franchising Authority.

The Franchising Authority may at its sole discretion take any lawful action which it deems appropriate to enforce the Franchising Authority's rights under the Franchise in lieu of revocation of the Franchise.

**Subd. 6.6. Force Majeure.** The Grantee shall not be held in default under, or in noncompliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control. This provision includes work delays caused by waiting for utility providers to service or monitor their utility poles to which the Grantee's Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary. Furthermore, the parties hereby agree that it is not the Franchising Authority's intention to subject the Grantee to penalties, fines, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on the Subscribers within the Service Area, or where strict performance would result in practical difficulties and hardship to the Grantee which outweigh the benefit to be derived by the Franchising Authority and/or Subscribers.

**Subd. 6.7. Abandonment.** Grantee may not abandon any portion of System without having given not less than three (3) months prior notice to City, or without prior approval by City. Further, Grantee may not abandon any portion of the System without compensating City for

damages resulting from the abandonment. If Grantee should abandon any portion of the System, Grantee shall provide City maps, drawings, diagrams or other records of any underground facilities abandoned or out of service in accordance Minn. Stat. 16D.04.

**Subd. 6.8. Purchase of System.** Pursuant to Minn. Stat. 238,084, when the Franchise or Cable System is transferred or sold, the City has the right to purchase the System. Within sixty (60) days after City's actual receipt of the bona fide offer, City shall submit to Grantee notice of City's interest in purchasing the System.

**Subd. 6.9. City Code.** To the extent consistent with Applicable Laws the Grantee shall be subject to applicable provisions of the City Code. 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.

**1320A.07. Miscellaneous Provisions.**

**Subd. 7.1. Actions of Parties.** In any action by the Franchising Authority or the Grantee that is mandated or permitted under the terms hereof such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof such approval or consent shall not be unreasonably withheld.

**Subd. 7.2. Entire Agreement.** This Franchise constitutes the entire agreement between the Grantee and the Franchising Authority and supersedes all other prior understandings and agreements oral or written. Any amendments to this Franchise shall be mutually agreed to in writing by the parties.

**Subd. 7.3. Reservation of Rights.** Acceptance of the terms and conditions of this franchise will not constitute, or be deemed to constitute, a waiver, either expressly or impliedly, by Grantee of any constitutional or legal right which it may have or may be determined to have either by subsequent legislation or court decisions. The Franchising Authority acknowledges that Grantee reserves all of its rights under applicable Federal and State Constitutions and laws.

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



the Grantee the more favorable terms benefits and conditions available to the other provider.

**Subd. 7.4. Notice.** Unless expressly otherwise agreed between the parties, every notice or response required by this Franchise to be served upon the Franchising Authority or the Grantee shall be in writing, and shall be deemed to have been duly given to the required party when placed in a properly sealed and correctly addressed envelope: a) upon receipt when hand delivered with receipt/acknowledgment, b) upon receipt when sent certified registered mail, c) within ten (10) business days after having been posted in the regular mail or d) or the next business day if sent by express mail or overnight air courier.

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

City of Silver Bay  
Attn: City Administrator  
7 Davis Drive  
Silver Bay, MN 55614-1318

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

Mediacom Communications  
Vice President, Regulatory & Legal Affairs  
One Mediacom Way  
Mediacom Park, NY 10918

With a copy to:

Mediacom Minnesota LLC  
Regional Vice President  
1504 Second Street Southeast  
PO Box 110  
Waseca, MN 56093

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

**Subd. 7.5. Descriptive Headings.** The captions to Sections and subsections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.

**Subd. 7.6. Severability.** If any Section, subsection sentence, paragraph, term, or provision hereof is determined to be illegal invalid or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof such determination shall have no effect on the validity of any other Section, subsection, sentence paragraph, term or provision hereof, all of which will remain in full force and effect for the term

of the Franchise.

(Ord. \_\_\_\_\_, passed \_\_\_\_\_)

**Exhibit A**

**Service to Public and Private Buildings**

**City of Silver Bay**

1. City Hall/Police Department
2. Library
3. Mary McDonald Center (first 200 feet and confined to public portion of building only)
4. Street Department Building
4. Fire Department/Rescue Squad
5. Rukavina Arena
6. Wm. M. Kelley School

**City of Beaver Bay**

1. Community Center/Township Hall
2. Fire Hall
3. North Shore Christian Academy (first 200 feet and upon request)

**Exhibit B**

**Additional Two-Way Connections to Public Institutions**

1. Silver Bay City Hall/Police Department
2. Silver Bay Public Library
3. Kelley High School or other agreed upon site for City's second PEG channel on a date agreeable to City and Grantee.

**Section 1320A - Cable Services Franchise Renewal**

This Franchise ("Franchise") is between the City of Silver Bay, Minnesota, hereinafter referred to as "the Franchising Authority" and Lake County, a political subdivision of the State of Minnesota, dba Lake Connections, hereinafter referred to as "the Grantee."

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

**1320A.01. Definition of Terms.** For the purpose of this Franchise, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular number include the plural number. The word "may" is directory and discretionary and not mandatory; the words "shall" and "will" are mandatory and not merely directory or discretionary.

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" is the lowest priced tier of Cable Service that includes the retransmission of local broadcast television signals and unless otherwise stated herein, 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).

C. "Cable Act" means Title VI of the Cable Act of 1934, as amended.

D. "Cable Services" shall mean (1) the one-way transmission to Subscribers of (a) video programming, or (b) other programming service and (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service. Cable Service as defined herein shall not be inconsistent with the definition set forth in 47 U.S.C. § 522

(6).

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. "Cable System" shall mean the Grantee's facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the Service Area.

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

H. "FCC" means Federal Communications Commission, or successor governmental entity thereto.

I. "Franchising Authority" or "City" means the City of Silver Bay, Minnesota.

J. "Franchise Fee" or includes any tax, fee or assessment of any kind required by this agreement and collected from subscribers.

K. "Grantee" means Lake County Minnesota, LLC or the lawful successor, transferee, or assignee thereof.

L. "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) late fees and returned check fees, 3) installation and reconnecting fees, 4) upgrade and downgrade fees, 5) local, state and national advertising revenue, 6) home shopping commissions. 7) equipment rental fees, and 8) 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).

M. "PEG" means public, educational and government access video programming.

N. "Person" means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity.

O. "Public Way" shall mean the surface of, and the space above and below any public street, highway freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right-of-way including, but not limited to, public utility easements dedicated utility strips. or rights-of-way dedicated for compatible uses now or hereafter held by the Franchising Authority in the Service Area which shall entitle the Grantee to the use thereof for the purpose of installing, operating repairing and maintaining the Cable System.

P. "Service Area" means the present boundaries of the Franchising Authority and the City of Beaver Bay by executed line extension agreement and shall include any additions thereto by annexation or other legal means subject to the exceptions in subsection 3.9.

Q. "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.

R. "Standard Installation" is defined as 125 feet from the nearest tap to the Subscriber's terminal.

S. "Subscriber" means a Person who lawfully receives Cable Service of the Cable System with the Grantee's express permission.

### **1320A.02. Grant of Franchise.**

**Subd. 2.1. Grant.** The Franchising Authority hereby grants to the Grantee a nonexclusive Franchise which authorizes the Grantee to construct and operate a Cable System in, along, among, upon, across above over, under, or in any manner connected with Public Ways within the Service Area. and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Public Way such facilities and equipment as may be necessary or appurtenant to the Cable System for the transmission and distribution of Cable Services, data services, information and other communications services or for any other lawful purposes.

**Subd. 2.2. Term.** This Franchise shall be for a term Ten (10) years and shall expire on \_\_\_\_\_, 2026.

**Subd. 2.3. Other Ordinances.** The Grantee agrees to comply with the terms of any lawfully adopted generally applicable local ordinance to the extent that the provisions of the ordinance do not have the effect of limiting the benefits or expanding the obligations of the Grantee that are granted by this Franchise. Neither party may unilaterally alter the material rights

and obligations set forth in this Franchise. In the event of a conflict between any ordinance and this Franchise, the Franchise shall control.

**Subd. 2.4. Other Authorizations.** The Franchising Authority shall not permit any person to provide services similar to those provided by the Grantee in the Service Area without first having secured a non-exclusive franchise from the Franchising Authority. The Franchising Authority agrees that any grant of additional franchises or other authorizations including OVS authorizations by the Franchising Authority to provide services similar to those provided by the Grantee pursuant to this Agreement to any other entity shall cover the entire Service Area and shall not be on terms and conditions more favorable or less burdensome to the grantee of any such additional franchise or other authorization than those which are set forth herein. In any renewal of this Franchise, the Franchising Authority, should it seek to impose increased obligations upon the Grantee, must take into account any additional franchise(s) or authorizations previously granted and find that the proposed increased obligations in the renewal, are not more burdensome and/or less favorable than those contained in any such additional franchise(s) or authorizations. In addition to the foregoing, the Franchising Authority in consideration of the benefits conferred upon it by the Grantee's investment in the cable related needs and interests of the Franchising Authority the Franchising Authority agrees that neither it nor any utility under its control and/or ownership commences provision of Cable Service in any part of Grantee's Service Area.

**Subd. 2.5. 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. 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.

**Subd. 2.6. Limitations of Franchise.** This Franchise shall be nonexclusive and complies with franchise standards contained in Minnesota Statutes, Chapter 238. No privilege or exemption shall be granted or conferred by the Franchise granted hereunder except those specifically prescribed herein. 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. This 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 5537 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. 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. 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. 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. 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.

**Subd. 2.7. Performance Bond.** 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 Thirty~~[RC1]~~~~[RC2]~~ Thousand and No/100 Dollars (\$30,000.00) ("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. Neither the provisions of this section, nor 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. 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.

**Subd. 2.8. Insurance.** 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 Five Hundred and No/100 Dollars (\$500,000.00) per occurrence or combined single limit and One Million and No/100 Dollars (\$1,000,000.00) for excess liability coverage. Grantee shall furnish to City a certificate of insurance evidencing such coverage.

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.

The certificate of insurance mentioned in the foregoing paragraph shall name the City, its' officers, boards, commissions, agents and employees, as additional insureds and shall contain a provision that a written notice of any cancellation or failure to renew said policy shall be delivered to the City within 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.

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.

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.

**Subd. 2.8. 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 or at a minimum, in a manner consistent with Federal and State regulations. 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.

**1320A.03. Standards of Service.**

**Subd. 3.1. Conditions of Occupancy.** The Cable System installed by the Grantee pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of Public Ways and with the rights and reasonable convenience of property owners who own property that adjoins any of such Public Ways.

**Subd. 3.2. Use and Restoration of Public Ways.** Grantee shall not dig into or disturb the surface of and Public Way without obtaining prior written permission from the City Street Superintendent. If during the course of the Grantee's construction, operation, or maintenance of the Cable System there occurs a disturbance of any Public Way by the Grantee, Grantee shall replace and restore the condition of the Public Way to a condition reasonably comparable to existing immediately prior to such disturbance.

**Subd. 3.3. Relocation for the Franchising Authority.** Upon its receipt of reasonable advance written notice, to be not less than ten (10) business days, the Grantee shall protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way, any property of the Grantee when lawfully required by the Franchising Authority by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of public structures or improvements which are not used to compete with the Grantee's services. The Grantee shall in all cases have the right of abandonment of its property.

**Subd. 3.4. Relocation for a Third Party.** The Grantee shall, on the request of any Person holding a lawful permit issued by the Franchising Authority, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way as necessary any property of the Grantee, provided: (A) the expense of such is paid by said Person benefiting from the relocation, including, if required by the Grantee, making such payment in advance; and (B) the Grantee is given reasonable advance written notice to prepare for such changes. For purposes of this subsection "reasonable advance written notice" shall be no less than thirty (30) business days

in the event of a temporary relocation, and no less than one hundred twenty (120) days for a permanent relocation.

**Subd. 3.5. Trimming of Trees and Shrubbery.** The Grantee shall have the authority to trim trees or other natural growth in order to access and maintain the Cable System.

**Subd. 3.6. Safety Requirements.** Construction, operation and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with generally applicable federal, state, and local regulations and the National Electric Safety Code.

**Subd. 3.7. Underground Construction.** In those areas of the Service Area where all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are underground, the Grantee likewise shall construct, operate, and maintain its Cable System underground. Nothing contained in this subsection shall require the Grantee to construct operate, and maintain underground any ground-mounted appurtenances.

**Subd. 3.8. Access to Open Trenches.** The Franchising Authority agrees to include the Grantee in the platting process for any subdivision. At a minimum, the Franchising Authority agrees to require as a condition of issuing a permit for open trenching to any utility or developer that (A) the utility or developer give the Grantee at least ten (10) business days advance written notice of the availability of the open trench, and (B) that the utility or developer provide the Grantee with reasonable access to the open trench. Notwithstanding the foregoing, the Grantee shall not be required to utilize any open trench.

**Subd. 3.9. Required Extensions of the Cable System.** Grantee agrees to provide Cable Service to all residences in the Service Area subject to the density requirements specified in this subsection. Whenever the Grantee receives a request for Cable Service from a potential Subscriber in an unserved area contiguous to Grantee's existing distribution facilities where there are at least 10 residences within 1320 cable-bearing strand feet (one-quarter cable mile) from the portion of the Grantee's trunk or distribution cable which is to be extended, it shall extend its Cable System to such Subscribers at no cost to said Subscribers for the Cable System extension, other than the published Standard/non-Standard Installation fees charged to all Subscribers. Notwithstanding the foregoing, Grantee shall have the right, but not the obligation, to extend the Cable System into any portion of the Service Area where another operator is providing Cable Service, into any

annexed area which is not contiguous to the present Service Area of the Grantee, or into any area which is financially or technically infeasible due to extraordinary circumstances, such as a runway or freeway crossing.

**Subd. 3.10. Subscriber Charges for Extensions of the Cable System.** No Subscriber shall be refused service arbitrarily. However, if an area does not meet the density requirements of subsection 3.9 above, the Grantee shall only be required to extend the Cable System to Subscriber(s) in that area if the Subscriber(s) are willing to share the capital costs of extending the Cable System.

Specifically, the Grantee shall contribute a capital amount equal to the construction cost per mile, multiplied by a fraction whose numerator equals the actual number of residences per 1320 cable-bearing strand feet from the Grantee's trunk or distribution cable, and whose denominator equals 10. Subscribers who request service hereunder shall bear the remaining cost to extend the Cable System on a pro rata basis. The Grantee may require that payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance. Subscribers shall also be responsible for any Standard/non-Standard Installation charges to extend the Cable System from the tap to the residence.

**Subd. 3.11. Cable Service to Public Buildings.** 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 A attached hereto and made a part hereof, and accredited public and private school buildings subsequently designated by City. This[RC3] 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.

Additional outlets in any of the locations identified on Exhibit A will be installed by

Grantee at the rate card price current for the City of Silver Bay customers. Alternatively, said institutions may add outlets at their 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.

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).

**Subd. 3.12. Live Broadcast Facilities and Two-Way Network.** 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 B attached hereto and made a part hereof. The City shall be responsible for all terminal equipment at City Hall and at each location listed in Exhibit B, including any optical transmitters within the City facilities and all necessary production equipment the City may choose to utilize. 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 head end 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 Subdivision shall not be deemed "Franchise Fees" within the meaning of Section 622 of the Cable Act (47 U.S.C. 542). [RC4] Any recovery by Grantee shall be in addition to and not by way of offset.

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

Franchising Authority shall make application for such funds on behalf of the Grantee.

**Subd. 3.14. 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 business (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.

**Subd. 3.16. Channel Capacity.** Channel Capacity Grantee shall maintain for the term of this Franchise a System cable of providing voice, Video, and data services. The Franchising Authority acknowledges that this Franchise Agreement and its requirements herein only apply to the Grantee's delivery of video services.

**1320A.04. Regulation by the Franchising Authority.**

**Subd. 4.1. Franchise Fee.**

- a. The Grantee shall pay to the Franchising Authority a franchise fee of three percent (3%) of annual Gross Revenues (as defined in subsection 1.1 of this Franchise). In accordance with the Cable Act, the twelve (12) month period applicable under the Franchise for the computation of the franchise fee shall be a calendar year. The franchise fee payment shall be due quarterly and payable within 60 days after the close of the preceding calendar year. Each payment shall be accompanied by a brief report prepared by a representative of the Grantee showing the basis for the computation. After the three years from Grantee's acceptance of this Agreement, the Franchising Authority, upon vote of the City Council and ninety (90) days' notice to Grantee, may

increase the Franchise Fee up a maximum of Five percent (5%) of annual Gross Revenues.

- b. Limitation on Franchise Fee Actions. The period of limitation for recovery by the Franchising Authority of any franchise fee payable hereunder shall be three (3) years from the date on which payment by the Grantee is due to the Franchising Authority.

**Subd. 4.2. Rates and Charges.** The Franchising Authority may regulate rates for the provision of Basic Cable Service and equipment as expressly permitted by federal law.

**Subd. 4.3. Renewal of Franchise.**

- a. The Franchising Authority and the Grantee agree that any proceedings undertaken by the Franchising Authority that relate to the renewal of the Grantee's Franchise shall be governed by and comply with the renewal provisions of state and federal law.
- b. In addition to the procedures set forth in the Cable Act, the Franchising Authority agrees to notify the Grantee of all of its assessments regarding the identity of future cable-related community needs and interests as well as the past performance of the Grantee under the then current Franchise term. The Franchising Authority further agrees that such assessments shall be provided to the Grantee promptly so that the Grantee has adequate time to submit a proposal pursuant to the Cable Act and complete renewal of the Franchise prior to expiration of its term.
- c. Notwithstanding anything to the contrary set forth in this subsection 4.3, the Grantee and the Franchising Authority agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment in accordance with the provisions of federal law, the Franchising Authority and the Grantee may agree to undertake and finalize informal negotiations regarding renewal of the then current Franchise and the Franchising Authority may grant a renewal thereof.
- d. The Grantee and the Franchising Authority consider the terms set forth in this subsection 4.3 to be consistent with the express renewal provisions of the Cable Act.

**Subd. 4.4. Conditions of Sale.** If a renewal or extension of the Grantee's Franchise is denied or the Franchise is lawfully terminated and the Franchising Authority either lawfully acquires ownership of the Cable System or by its actions lawfully effects a transfer of ownership of the Cable System to another party, any such acquisition or transfer shall be at the price

determined pursuant to the provisions set forth in Section 627 of the Cable Act.

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

**Subd. 4.5. Transfer of Franchise.** The Grantee's right, title or interest in the Franchise shall not be sold, transferred, assigned or otherwise encumbered, other than to an entity controlling, controlled by or under common control with the Grantee, without prior written notice to the Franchising Authority. No such notice shall be required however, for a transfer in trust, by mortgage, by other hypothecation or by assignment of any rights, title, or interest of the Grantee in the Franchise or Cable System in order to secure indebtedness.

**Subd. 4.6. PEG Access.** Grantee shall provide, at no cost to the City or Persons who submit programming, up to three (3) Channels for PEG access use. Initially, two (2) Channels shall be designated for public, educational and government access programming as determined by the City. In addition, one (1) additional Channel shall be designated for educational access or regional programming upon agreement of the City and Grantee that there is sufficient support and programming to generate programming 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 such purpose. 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.

Grantee will comply, at a minimum, with the following requirements regarding access Channels: 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 One Thousand and No/ 100 Dollars (\$ 1,000.00) 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.

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. All access Channels shall be transmitted to Subscribers on the Basic Cable Service tier, unless otherwise agreed to by the City. 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.

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.

The City's PEG Channels will continue to be carried along 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.

Grantee shall collect, on behalf of City, a per Subscriber fee of no more than Fifty Cents (\$.50) per month solely to fund PEG access capital related expenditures (hereinafter "PEG Capital Access Fee"). Thereafter, the City may upon ninety (90) days' notice to Grantee request an adjustment of the fee up to one-dollar (\$ 1) per month to support growth in PEG programming. Such request cannot occur more than annually. 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).

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 above.

**Subd. 4.7. PEG Access Commercialism.** Access channel is a channel made available to the Franchising Authority by Grantee for the purpose of cablecasting non-commercial programming by Franchising Authority residents, Franchising Authority administration and educational institutions. The Franchising Authority agrees not to use the access channel to provide commercial or revenue-generating services or services that may compete, directly or indirectly, with services provided by the Grantee provided, however, that the Franchising Authority may cablecast acknowledgments of funding sources and the underwriting of programming costs. Such acknowledgments will be deemed non-commercial if they are within the standards for underwriting applicable to the Public Broadcasting Service (PBS) or the standards necessary to maintain tax-exempt status within the applicable regulations of the Internal Revenue Service. Programming shall not lose its non-commercial character by reason of including public or charitable fund-raising events or activities or donor and underwriting announcements reflecting funding provided by for-profit or non-profit entities for PEG programming in accordance with the provisions of 47 C.F.R. 73.621 of the FCC's Rules.

**1320A.05. Books and Records.** The Grantee agrees that the Franchising Authority upon thirty (30) days written notice to the Grantee and no more than once annually may review such of its books and records at the Grantee's business office during normal business hours and on a non-disruptive basis as is reasonably necessary to ensure compliance with the terms of this Franchise. Such notice shall specifically reference the subsection of the Franchise that is under review so that the Grantee may organize the necessary books and records for easy access by the Franchising Authority. The Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years. Notwithstanding anything to the contrary set forth herein, the Grantee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature nor disclose books and records of any affiliate which is not providing Cable Service in the Service Area. The Franchising Authority agrees to treat any

information disclosed by the Grantee as confidential and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof. The Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act.

**1320A.06. Enforcement and Termination of Franchise.**

**Subd. 6.1. Notice of Violation.** In the event that the Franchising Authority believes that the Grantee has not complied with the any material term of the Franchise, the Franchising Authority shall informally discuss the matter with Grantee. If these discussions do not lead to resolution of the problem the Franchising Authority shall notify the Grantee in writing of the exact nature of such alleged noncompliance.

**Subd. 6.2. The Grantee's Right to Cure or Respond.** The Grantee shall have thirty (30) days from receipt of the notice described in subsection 7.1: (A) to respond to the Franchising Authority, contesting the assertion of such noncompliance or (B) to cure such default, or (C) in the event that, by the nature of such default it cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the Franchising Authority of the steps being taken and the projected date that they will be completed.

**Subd. 6.3. Public Hearing.** In the event that the Grantee fails to respond to the notice described in subsection 7.1 pursuant to the procedures set forth in subsection 7.2, or in the event the alleged default is not remedied within thirty (30) days or the date projected pursuant to 7.2(C) above, if it intends to continue its investigation into the default, the Franchising Authority shall schedule a public hearing. The Franchising Authority shall provide the Grantee at least thirty (30) days prior written notice of such hearing, which specifies the time, place and purpose of such hearing, and provide the Grantee the opportunity to be heard.

**Subd. 6.4. Enforcement.** Subject to applicable federal and state law, in the event the Franchising Authority, after the hearing set forth in subsection 6.3, determines that the Grantee is in material default of any provision of the Franchise the Franchising Authority may:

- a. Commence an action at law for monetary damages or seek other equitable relief; or,
- b. In the case of repeated or ongoing substantial non-compliance with a material term or terms of the Franchise, seek to revoke the Franchise in accordance with subsection 6.5.

**Subd. 6.5. Revocation.** Should the Franchising Authority seek to revoke the Franchise after following the procedures set forth in subsections 6.1 to 6.4 above, the Franchising Authority shall give written notice to the Grantee of its intent. The notice shall set forth the exact nature of the repeated or ongoing substantial noncompliance with a material term or terms of the franchise. The Grantee shall have ninety (90) days from such notice to object in writing and to state its reasons for such objection. In the event the Franchising Authority has not received a satisfactory response from the Grantee, it may then seek termination of the Franchise at a public hearing. The Franchising Authority shall cause to be served upon the Grantee at least thirty (30) days prior to such public hearing, a notice specifying the time and place of such hearing and stating its intent to revoke the Franchise.

At the designated hearing, Grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce relevant evidence, to require the production of evidence, to compel the relevant testimony of the officials, agents, employees or consultants of the Franchising Authority, to compel the testimony of other persons as permitted by law and to question witnesses. A complete verbatim record and transcript shall be made of such hearing.

Following the hearing, the Franchising Authority shall determine whether or not the Franchise shall be revoked. If the Franchising Authority determines that the Franchise shall be revoked the Franchising Authority shall promptly provide Grantee with its decision in writing. The Grantee may appeal such determination of the Franchising Authority to an appropriate court which shall have the power to review the decision of the Franchising Authority de novo. Grantee shall be entitled to such relief as the court finds appropriate. Such appeal must be taken within sixty (60) days of Grantee's receipt of the determination of the Franchising Authority.

The Franchising Authority may at its sole discretion take any lawful action which it deems appropriate to enforce the Franchising Authority's rights under the Franchise in lieu of revocation of the Franchise.

**Subd. 6.6. Force Majeure.** The Grantee shall not be held in default under, or in noncompliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control. This provision includes work delays caused by waiting for utility providers to service or monitor

their utility poles to which the Grantees Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary. Furthermore, the parties hereby agree that it is not the Franchising Authority's intention to subject the Grantee to penalties, fines, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on the Subscribers within the Service Area, or where strict performance would result in practical difficulties and hardship to the Grantee which outweigh the benefit to be derived by the Franchising Authority and/or Subscribers.

**Subd. 6.7. Abandonment.** Grantee may not abandon any portion of System without having given not less than three (3) months prior notice to City, or without prior approval by City. Further, Grantee may not abandon any portion of the System without compensating City for damages resulting from the abandonment. If Grantee should abandon any portion of the System, Grantee shall provide City maps, drawings, diagrams or other records of any underground facilities abandoned or out of service in accordance Minn. Stat. 16D.04.

**Subd. 6.8. Purchase of System.** Pursuant to Minn. Stat. 238,084, when the Franchise or Cable System is transferred or sold, the City has the right to purchase the System. Within sixty (60) days after City's actual receipt of the bona fide offer, City shall submit to Grantee notice of City's interest in purchasing the System.

**Subd. 6.9. City Code.** To the extent consistent with Applicable Laws the Grantee shall be subject to applicable provisions of the City Code. 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.

**1320A.07. Miscellaneous Provisions.**

**Subd. 7.1. Actions of Parties.** In any action by the Franchising Authority or the Grantee that is mandated or permitted under the terms hereof such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof such approval or consent shall not be unreasonably withheld.

**Subd. 7.2. Entire Agreement.** This Franchise constitutes the entire agreement between the Grantee and the Franchising Authority and supersedes all other prior understandings and agreements oral or written. Any amendments to this Franchise shall be mutually agreed to in writing by the parties.

**Subd. 7.3. Reservation of Rights.** Acceptance of the terms and conditions of this

franchise will not constitute, or be deemed to constitute, a waiver, either expressly or impliedly, by Grantee of any constitutional or legal right which it may have or may be determined to have either by subsequent legislation or court decisions. The Franchising Authority acknowledges that Grantee reserves all of its rights under applicable Federal and State Constitutions and laws.

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

**Subd. 7.4. Notice.** Unless expressly otherwise agreed between the parties, every notice or response required by this Franchise to be served upon the Franchising Authority or the Grantee shall be in writing, and shall be deemed to have been duly given to the required party when placed in a properly sealed and correctly addressed envelope: a) upon receipt when hand delivered with receipt/acknowledgment, b) upon receipt when sent certified registered mail, c) within ten (10) business days after having been posted in the regular mail or d) or the next business day if sent by express mail or overnight air courier.

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

City of Silver Bay  
Attn: City Administrator  
7 Davis Drive  
Silver Bay, MN 55614-1318

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

Lake Connections  
Lake County  
616 Third Avenue  
Two Harbors, MN 55616

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

**Subd. 7.5. Descriptive Headings.** The captions to Sections and subsections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.

**Subd. 7.6. Severability.** If any Section, subsection sentence, paragraph, term, or provision hereof is determined to be illegal invalid or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof such determination shall have no effect on the validity of any other Section, subsection, sentence paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise.

(Ord. \_\_\_\_\_, passed \_\_\_\_\_)

Exhibit A

Service to Public and Private Buildings

City of Silver Bay

1. City Hall/Police Department
2. Library
3. Mary McDonald Center (first 200 feet and confined to public portion of building only)
4. Street Department Building
5. Fire Department/Rescue Squad
6. Rukavina Arena
7. Wm. M. Kelley School

City of Beaver Bay

1. Community Center/Township Hall
2. Fire Hall
3. North Shore Christian Academy (first 200 feet and upon request)

**Exhibit B**

**Additional Two-Way Connections to Public Institutions**

1. Silver Bay City Hall/Police Department
2. Silver Bay Public Library
3. Kelley High School or other agreed upon site for City's second PEG channel on a date agreeable to City and Grantee.