

**CITY OF LA VISTA**  
**MAYOR AND CITY COUNCIL REPORT**  
**APRIL 16, 2024 AGENDA**

<b>Subject:</b>	<b>Type:</b>	<b>Submitted By:</b>
NON-EXCLUSIVE FRANCHISE AGREEMENT – GREAT PLAINS COMMUNICATIONS, LLC & PINPOINT BROADBAND, LLC	RESOLUTION ◆ ORDINANCE RECEIVE/FILE	PAT DOWSE CITY ENGINEER

**SYNOPSIS**

An ordinance has been prepared to approve a Nonexclusive Franchise Agreement with Great Plains Communications LLC, and Pinpoint Broadband, LLC (Great Plains).

**FISCAL IMPACT**

A Franchise Fee Equal to Five Percent (5%) of Gross Revenue would be remitted to the City in accordance with this Agreement for the use of public rights-of-way to provide Cable Services within the City.

**RECOMMENDATION**

Approval.

**BACKGROUND**

Great Plains proposes to use City Right of Way to construct a Cable System to provide Cable Services in the City. The initial step in providing services to the City is the execution of a non-exclusive cable franchise agreement, followed by design, permitting and installation of fiber and equipment within applicable City Rights-of-Ways and easements.

It is expected that Great Plains will roll out services to various parts of the City in phases until over time the network is completely built out citywide. A construction and implementation schedule for an initial phase has been submitted and is expected to begin once all Non-Exclusive Franchise Agreement provisions and Right-of-Way permitting requirements are satisfied. Also, an executed consent agreement between Pinpoint Communications and Great Plains signifying Pinpoint's adherence to the above referenced Non-Exclusive Franchise Agreement will be required prior to issuance of permitting.

A copy of the agreement is attached.

**ORDINANCE NO. \_\_\_\_\_**

AN ORDINANCE OF THE CITY OF LA VISTA, SARPY COUNTY, NEBRASKA APPROVING A NONEXCLUSIVE CABLE FRANCHISE OF GREAT PLAINS COMMUNICATIONS LLC, AND PINPOINT BROADBAND LLC; APPROVING AND AUTHORIZING EXECUTION OF A NONEXCLUSIVE FRANCHISE AGREEMENT; AND PROVIDING FOR PUBLICATION OF THIS ORDINANCE.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, SARPY COUNTY, NEBRASKA:

Section 1. The Mayor and City Council of the City find and determine that it is advisable to approve a nonexclusive franchise to Great Plains Communications LLC and Pinpoint Broadband LLC (together "Franchisee") to construct, install, operate and maintain a cable system and provide cable services to the residents of the City.

Section 2. A nonexclusive franchise agreement between the City and Franchisee is presented with, and incorporated by reference into, this Ordinance ("Franchise Agreement"). The City hereby approves a nonexclusive franchise for Franchisee to construct, install, operate and maintain a cable system and provide cable services to the residents of the City, and the Franchise Agreement between the City and Franchisee is hereby adopted and approved, subject to Franchisee's filing a certificate of franchise with the City Clerk in form and content satisfactory to the City Administrator or City Administrator's designee, and further subject to such ordinances, rules and regulations of the City (including, but not limited to, Chapter 115 of the La Vista Municipal Code) and such other applicable laws, rules and regulations, as in effect or amended from time to time.

Section 3. The Mayor and City Clerk of the City of La Vista are hereby authorized to execute the Franchise Agreement and to take such other action as is necessary or appropriate to carry out the actions approved herein.

Section 4. This Ordinance shall be in full force and effect from and after passage, approval and publication in a legal newspaper in or of general circulation within the City or in pamphlet form as provided by law, as the City Clerk determines to be in the best interests of the City and its residents.

PASSED AND APPROVED THIS 16TH DAY OF APRIL 2024.

CITY OF LA VISTA

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Douglas Kindig, Mayor

ATTEST:

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Pamela A. Buethe, MMC  
City Clerk

Nonexclusive Franchise Agreement Between  
GREAT PLAINS COMMUNICATIONS LLC,  
PINPOINT BROADBAND LLC  
And  
CITY OF LAVISTA, NEBRASKA

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EXHIBITS

This Franchise Agreement (the "Franchise" or the "Agreement"), is entered into by and between the City of La Vista, a municipal corporation (the "Franchising Authority"), Great Plains Communications LLC ("Great Plains") and Pinpoint Broadband LLC ("Pinpoint") (Great Plains and Pinpoint, each is a Delaware limited liability company authorized to do business in Nebraska and whose principal place of business is located at 1635 Front Street, Blair, Nebraska, and together referred to herein as "Company"). In consideration of the covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby covenant and agree as follows:

## SECTION 1. DEFINITIONS

The following terms, phrases, words, and their derivations shall have the meanings set forth herein, unless the context clearly indicates that another meaning is intended.

**"Affiliate"** means any entity, directly or indirectly, controlling, controlled by, or under common control with the Company.

**"Applicable Law"** means all applicable federal, state and local laws, rules, regulations and other requirements, as adopted or amended from time to time, governing matters set forth in, arising out of or related to this Agreement, including, but not limited to the Cable Act.

**"Basic Service"** means the lowest priced tier of service which includes the retransmission of local broadcast television signals, including as a minimum, but not limited to, all must-carry signals and all PEG channels.

**"Cable Act"** means collectively Title VI of the Communications Act of 1934, as amended, 47 U.S.C. Sec. 521, et seq., and the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996, as amended.

**"Cable Television System" or "Cable System"** means a facility of the Company, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which is provided to multiple

Subscribers within the Franchise Area, but such term does not include: (1) a facility that serves only to retransmit the television signals of one (I) or more television broadcast stations; (2) a facility that serves Subscribers without using any Public Rights-of-Way; (3) a facility of a common carrier that is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, except that such facility shall be considered a Cable System (other than for the purposes of Section 621(c) of the Cable Act) to the extent that such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (4) an open video system that complies with §653 of the Cable Act; or (5) any facilities of any electric utility used solely for operating its electric utility system.

**"Cable Service" or "Service"** means the one-way transmission to Subscribers of (i) video programming or (ii) other programming services, such as digital audio; and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

**"Company"** is defined in the Preamble.

**"Control" or "Controlling Interest"** means, except to the extent otherwise defined elsewhere in this Agreement, actual working control in whatever manner exercised.

**"Effective Date"** means the last date that this Franchise Agreement is executed by the parties on the last page hereof and a Certificate of Franchise is issued and accepted.

**"Expanded Basic Service"** means Basic Service and the next tier of cable services above the Basic Service tier, or the future analog or digital equivalent offered by the Company, together constituting sixty or more channels of programming and excluding premium or pay-per-view services.

**"FCC"** means the Federal Communications Commission, its designee, or any successor thereto.

**"Franchise Area"** means the incorporated limits of the City of La Vista, Nebraska, as constituted from time to time during this Agreement.

**"Franchisee"** means Company.

**"Franchising Authority" or "City"** means the City of La Vista, Nebraska, or its successor,

or any official, officer, employee, agent, board, bureau, authority, agency, commission, or department specifically designated or authorized by the Franchising Authority to act on its behalf with respect to one or more specified matters under this Agreement.

**"Governmental Programming Channels"** means those channels designated by the Company to provide Governmental Programming.

**"Governmental Programming"** means such information, data, messages, broadcasts and public meetings of the Franchising Authority and such other political subdivisions of the State of Nebraska or other governmental unit, or any committee, body or agency thereof, and any other civic, public, educational or governmental programming, as authorized from time to time by the Franchising Authority or its designee.

**"Gross Revenue"** shall mean all revenue derived directly or indirectly by the Company and any Affiliate, subsidiary, parent, or any Person in which the Company has a financial interest from the operation of the Cable System to provide Cable Service pursuant to this Agreement. Provided, "Gross Revenue(s)" shall include, but not be limited to:

- a. Revenue derived from any tier of Cable Service;
- b. Revenue derived from optional premium Cable Services;
- c. Revenue derived from Pay Television Cable Services;
- d. Revenue derived from installation, disconnection, reconnection and changes in service
- e. Late fees;
- f. Franchise Fees;
- g. Revenue derived from leased channel fees for commercial leased access programming and services;
- h. Converter rentals;
- i. Studio rental, production equipment and personnel fees;
- j. Advertising revenues from the provision of Cable Services over the Cable System;
- k. Revenues from program guides and electronic guides;
- l. Revenues from home shopping, and other revenue-sharing arrangements;
- m. Additional outlet fees;
- n. All revenues derived from any ancillary services related to the provision of Cable Service pursuant to this Franchise; and
- o. Revenue received by any entity other than the Company where necessary to prevent

evasion or avoidance of the obligation under this Franchise to pay the Franchise Fees.

p. "Gross Revenue(s)" shall not include:

- i. Bad debt;
- ii. Any taxes on services furnished by the Company, which are imposed directly on any Subscriber or user by the State, City or other governmental unit and which are collected by the Company on behalf of said governmental unit. The Franchise Fee is not such a tax; or
- iii. Revenue from or fees for any services other than Cable Services or from services that are not provided to Subscribers via the Cable System.

The parties intend for the definition of Gross Revenue(s) to be as inclusive as possible consistent with existing Applicable Law. If there is a change in Applicable Law subsequent to the Effective Date of this Franchise, such change shall not impact this Gross Revenues definition, unless the change specifically preempts the affected portion of the definition above.

**"Normal Business Hours"** means, for purposes of FCC rules referred to in Section 6.1 of Exhibit A in effect on the date that this Agreement is executed, and for any other purpose of this Agreement, with respect to office hours and in-person and live telephone service at Company's local office, 8 a.m. to 5 p.m., Monday through Friday, and 9 a.m. to 1 p.m. on Saturday, unless otherwise agreed by Franchisee and Franchising Authority. For hours other than specified in the foregoing sentence, Company shall make available a live operator or telephone answering service twenty-four (24) hours each day, seven (7) days a week, which shall be the Normal Business Hours during these times with respect to the telephone service provided.

**"Person"** means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for-profit.

**"Street", "Public Right-of-Way" or "Right-of-Way"** means the surface of, and the space above and below, any dedicated public street, highway, freeway, bridge, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other dedicated public right-of way in the Franchise Area, including, but not limited to, easements within the Franchise Area which have been dedicated for compatible uses; but shall not include any property of the Franchising Authority which is not a dedicated public right-of-way, street, highway or alley.

**"Subscriber"** means any Person lawfully receiving any Cable Service by means of or in

connection with the Cable System, whether or not a fee is paid for such Cable Service.

## SECTION 2. GRANT OF AUTHORITY

2.1                   Grant of Franchise. Subject to the terms and conditions of this Franchise Agreement, the charter of the Franchising Authority and applicable ordinances of the Franchising Authority from time to time, the Franchising Authority hereby grants to the Franchisee a nonexclusive franchise which authorizes the Franchisee to construct, install, operate and maintain a Cable System in, along, upon, across, above, over or under the Public Rights-of-Way within the Franchise 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 Rights-of-Way and all extensions thereof and additions thereto, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the Cable System.

2.2                   Term of Franchise. This Franchise shall expire ten (10) years from the Effective Date of this contract.

2.3                   Renewal. Subject to Section 626 of the Cable Act (47 U. S.C. § 546), the Franchising Authority reserves the right to grant or deny renewal of the Franchise.

2.4                   Reservation of Authority. Nothing in this Agreement shall (i) abrogate the right of the Franchising Authority, to perform any public works or public improvements of any description, (ii) be construed as a waiver of any codes or ordinances of the Franchising Authority or of the Franchising Authority's right to require the Company or any Person utilizing the Cable System to secure the appropriate permits or authorizations for such use, or (iii) be construed as a waiver or release of the rights of the Franchising Authority in and to the Streets.

2.5                   Absent a change in Applicable Law following the Effective Date of this Agreement, the Company (1) acknowledges and accepts the Franchising Authority's legal right to issue and enforce this Agreement; (2) accepts and agrees to comply with each and every provision of this Agreement; (3) agrees that the Franchise was granted pursuant to processes and procedures consistent with Applicable Law, and that it will not raise any claim to the contrary; and (4) agrees

not to challenge or attempt to challenge in any claim or proceeding any condition or term of this Agreement or otherwise contend the same to be unreasonable, arbitrary or void or that the Franchising Authority was without power or authority to make such term or condition. The Company accepts and will accept the validity of the terms and conditions of all generally applicable, non-discriminatory local laws as it exists and may be amended from time to time throughout the term of its Franchise in its entirety; provided, however, that any such amendments of local law that are solely applicable to cable service franchises or cable systems and completely discretionary rather than made to reflect changes to Applicable Law, shall not conflict with the terms of this Franchise; provided, however, that nothing set forth in the foregoing provisions of this Section 2.5 shall prevent or prohibit the Franchising Authority or Company from receiving the benefit of mandated rights subsequently enacted under Applicable Law which expressly preempt any of the terms, provisions and/or obligations hereunder. In the event any such rights are subsequently enacted under Applicable Law, the parties agree that this Agreement, at the option of the either party, shall be subject to renegotiation. Should any local law or ordinance be enacted with terms and conditions that are in direct conflict with the terms and conditions of this Franchise, the terms and conditions of this Franchise will be controlling.

2.6 This Agreement and the Franchise granted hereunder shall constitute both a right and an obligation to provide Cable Services as set forth herein. The Company's authority under this Agreement is subject to and must be exercised in strict accordance with Applicable Law. This Franchise does not authorize the provision of any service other than Cable Services or in any way relieve the Company of any generally applicable, non-discriminatory obligation to obtain any additional authorizations or permits now or hereafter required to use the Public Rights-of-Way in the Franchise Area to provide Cable Services or other services. The provisions of this Agreement are not a bar to the imposition of similar, different or additional generally applicable, non-discriminatory conditions with respect to the use of the Public Rights-of-Way in the Franchise Area in connection with the provision of Cable Services or services other than Cable Services provided such conditions are materially consistent with the conditions imposed on similarly situated Public Rights-of-Way users, other than the Omaha Public Power District and the Metropolitan Utilities District to the extent of any special rights or powers of such Districts in or

to Public Rights-of-Way pursuant to Applicable Law. Nothing herein shall be read to prevent Company from providing other non-cable services to the extent consistent with Applicable Law.

2.7 No Right-of-Way shall be used by Company if the Franchising Authority determines that such use is inconsistent with the terms, conditions or provisions by which such Right-of-Way was created or dedicated, or are presently used, or Applicable Law.

2.8 No rights shall pass to the Company by implication. Without limiting the foregoing, by way of example and not limitation, this Agreement shall not include or be a substitute for:

(A) Any other generally applicable, non-discriminatory permit or authorization generally required under Applicable Law for the privilege of transacting and carrying on a business or activities within the Franchise Area that may be required by the Franchising Authority; or

(B) Any generally applicable, non-discriminatory permits or agreements for occupying any property of the Franchising Authority or private entities to which access is not specifically granted by this Agreement including, without limitation, generally applicable non-discriminatory permits and agreements for placing devices on or in poles, conduits, other structures, or railroad easements, whether owned by the Franchising Authority or another Person or entity.

### SECTION 3. THE CABLE SYSTEM

#### 3.1 The Cable System and Its Operations

3.1.1 General Obligation. The Company shall construct, operate, maintain, and upgrade the Cable System as provided in this Agreement and in accordance with applicable law capable of providing a minimum of one hundred (100) channels of Cable Service to Subscribers in the Franchise Area.

3.1.2 Cable Service to All Persons. Commencing on the two (2) year anniversary of the Effective Date and within seven (7) calendar days of a written request for Cable Service, the Company shall use commercially reasonable efforts to make Cable Service available to every

person requesting the same at any location, including persons residing in individual units of a multiple dwelling unit, within the Franchise Area and no charge shall be imposed on any current or potential subscriber in the Franchise Area for extending Cable Service to the requestor's location so long as the requestor is within one mile of the Franchisee's trunk or distribution cable and there are at least five residential units within a radius of 500 feet of the requestor's location. In the event a person requesting Cable Service is beyond the area set forth in the previous sentence, the Franchisee shall pay the costs of extending the Cable System the first 1,000 feet from the point of the Franchisee's trunk or distribution cable nearest the requestor's location and the requestor may obtain service by paying the construction costs to extend the Cable System the remainder of the distance to the requestor's location. Subject to the foregoing two (2) sentences of this Section 3.1.2., in any new subdivision or development in the Franchise Area, Company shall extend or install the Cable System no later than the date on which electric or telephone utilities are installed such that the Company need only install drops in a dwelling in order to provide Cable Service in the subdivision or development.

3.1.3                    Mandatory Continuity of Service. It shall be the right of all Subscribers to continue receiving Cable Service insofar as their financial and other obligations to the Company are honored. In the event that Company elects to overbuild, rebuild, modify, Transfer (as defined in Section 9 of this Agreement) or sell the Cable System or Franchise, or Company gives the Franchising Authority notice of intent to terminate or fails to renew its Franchise, the Company shall act in good faith and in accordance with Applicable Law so as to insure that all Subscribers receive continuous, uninterrupted Cable Service regardless of the circumstances. In the event of a change of Company, or in the event a new operator acquires the Cable System or Franchise, the Company shall, in good faith and in accordance with Applicable Law, cooperate with the Franchising Authority, new franchisee or operator in maintaining continuity of Cable Service to all Subscribers in good standing.

In the event Company fails to provide Cable Service for seven (7) consecutive days without prior approval of the City or without just cause, the City may, at its option, provide Cable Service

or designate an operator until such time as Company restores Service under conditions acceptable to the City or a permanent operator is selected. If the City is required to fulfill this obligation for the Company, the Company shall reimburse the Franchising Authority for all reasonable costs or damages in excess of revenues from the Cable Service or Cable System received by the Franchising Authority that are the result of the Company's failure to perform. The Franchising Authority shall also be entitled to its payment of the Franchise Fee during that period.

3.1.4        Technical Performance. Throughout the term of this Agreement, the Company shall operate and maintain the Cable System in accordance with the testing procedures and the technical performance standards of the FCC in effect from time to time, and shall provide to Franchising Authority upon request a written report of the results of any testing of the Cable System or Cable Services. Franchisee shall at all times maintain a skilled workforce and inventory of parts that are necessary for the erection, construction, operation, maintenance and repair of the Cable System, and Franchisee's performance of any other obligation hereunder, from time to time under this Agreement.

3.1.5        Emergency Alert System. The Company shall install and maintain an Emergency Alert System that meets all requirements of federal law.

3.2            Requirements With Respect to Work on the Cable System

3.2.1        General Requirements. All work involved in the construction, operation, maintenance, installation, use, operation, repair, upgrade, relocation or removal of the Cable System shall be performed in a safe, thorough, reliable, good and workmanlike manner, applying industry standards of engineering and workmanship, and using materials of good and durable quality, and shall meet or exceed (i) all Applicable Laws (ii) safety or industry codes applicable to the work performance or governing those persons performing the work, and (iii) requirements of any utility whose poles or conduits are used for the Cable System or any part thereof. If, at any time, it is reasonably determined by the Franchising Authority or any other agency or authority of competent jurisdiction that any part of the Cable System, including, without limitation, any means used to distribute Signals over or within the Cable System, is harmful to the health or safety of any Person, then the Company shall, at its own cost and expense, promptly correct all such conditions.

3.2.2        Licenses and Permits. The Company shall obtain all permits, licenses, or other forms of approval or authorization necessary to construct, operate, maintain, repair or upgrade the Cable System, or any part thereof, and shall comply with any other code or ordinance of the Franchising Authority, as amended from time to time, and obtain any other approval or permission, as required from time to time for the Franchisee to perform hereunder, including, but not limited to, obtaining any permit that is required prior to use of Rights-of-Way or commencement of construction. Company shall be subject to all laws, rules, regulations and orders regarding private property with respect to performance under this Agreement. Company shall comply with all applicable zoning or land use ordinances, restrictions or regulations as may exist from time to time.

3.2.3        Relocation of Lines. If the grades of lines of any Street or Public Right-of-Way within the Franchise Area are changed at any time during the term of the Agreement, then the Company shall, at its sole cost and expense, upon the request of the Franchising Authority after reasonable prior notice to Company, protect or promptly alter or relocate the Cable System, or any part thereof, as directed by the Franchising Authority, so as to conform with such new grades or lines. In addition to, but not in limitation of the foregoing, Company shall protect, support, disconnect or remove from the Right-of-Way any portion of the Cable System when required to do so by the Franchising Authority due to any excavation, construction, repair, maintenance, grading, regrading, installation, vacation or relocation of any streets, sewers, pipes or other public facilities, structures, improvements or work. Furthermore, if a Street where Company has lines or other facilities is vacated, eliminated or closed, the Company's rights under this Agreement with respect to said Street shall terminate upon 30 days notice and Company shall remove the Cable System from the former Street unless it obtains easements from property owners permitting the Cable System to remain; provided, however, that Franchising Authority may reserve easements for Cable System to use the former Street to the extent reserved for other utilities. Company shall pay the entire cost and expense of any removal, movement, relocation, installation or reinstallation of any lines or other facilities pursuant to this 3.2.3 unless it is for the benefit of a private party, in which case Company may charge the private party for actual costs and expenses.

3.2.4        Protection of Structures. In connection with the construction, operation, maintenance, repair, upgrade, or removal of the Cable System, the Company shall, at its own cost

and expense, protect any and all existing structures belonging to the Franchising Authority and all designated landmarks. The Company shall obtain the prior approval of the Franchising Authority before altering any water main, sewerage or drainage system, or any other municipal structure, improvement or property. Any such alteration shall be made by the Company, at its sole cost and expense, and in a manner prescribed by the Franchising Authority. The Company agrees that it shall be liable, at its own cost and expense, to replace or repair and restore, in a manner as may be specified by the Franchising Authority, any Street or other municipal structure, improvement or property that may be disturbed, damaged or destroyed as a result of any work hereunder or any act, omission or negligence of Company or its designee to as good or better condition as existed immediately before the disturbance, damage or destruction, and to maintain said condition for one (1) year thereafter. Company shall erect, install, construct, repair, replace and maintain the Cable System and otherwise carry out its duties under this Agreement in a manner that (i) minimizes interference with use of the Rights-of-Way and the property, inhabitants and activities in the Franchise Area; and (ii) does not unduly burden the present or future use of the Rights-of-Way. If the Franchising Authority determines that any portion of the Cable System constitutes an undue influence or burden, the Company shall at its sole cost and expense modify the Cable System or take such other action as the Franchising Authority determines to remove, eliminate or alleviate the influence or burden within the period specified by the Franchising Authority.

3.2.5            Movement of Wires. The Company shall, upon at least forty-five (45) days prior written notice (or such other notice period as agreed to by the parties) to Company by the Franchising Authority of any Person holding a permit (including a permit to move a structure) temporarily move its wires or other equipment. The Company may impose a reasonable charge on any Person (other than the Franchising Authority) for any such movement of its wires or equipment and may require payment in advance; provided, however, that the amount charged by Company shall not be greater than the Company's actual direct costs to carry out the move.

3.2.6            Emergency Actions. The Franchising Authority may, in case of fire, disaster, or other emergency situations, as reasonably determined by the Franchising Authority, cut or move any of the wires, cables, amplifiers, appliances, or other parts of the Cable System, in which event the Franchising Authority shall not incur any liability to the Company. When possible, the Company shall be consulted prior to any such cutting or movement of its wires and be given

the opportunity to perform such work itself. All costs to repair or replace such wires, cables, amplifiers, appliances or other parts of the Cable System shall be borne by the Company.

3.2.7        Safety Precautions. The Company shall, at its own cost and expense, undertake all necessary and appropriate efforts to prevent accidents at its work sites, including the placing and maintenance of proper guards, fences, barricades, watchmen, and suitable and sufficient lighting.

3.2.8        Other Property. Before entering or performing work on any municipal or private property in the Franchising Area, Company shall obtain the written permission of the property owner. In addition, Company shall at its sole cost and expense immediately restore and replace any real or personal property that is disturbed, damaged or destroyed as a result of any work hereunder or act, omission or negligence of Company or its designee to as good or better condition as such property was in immediately before the disturbance, damage or destruction, and shall maintain said condition for one (1) year thereafter.

3.2.9        Tree Trimming. Company shall have the authority to trim trees to prevent damage to the Cable System; provided, however, that any trimming shall be (i) performed in accordance with Applicable Law; and (ii) except in the event of an emergency, subject to the prior written approval of the owner of the property on which the trees are located.

3.3            Maps and Plats

3.3.1        Company's Obligation. The Company shall make available for inspection by the Franchising Authority true and accurate maps or plats of all existing and proposed installations and update the same at reasonable intervals so that the Franchising Authority will at times have access to current set of such maps and plats.

3.3.2        Franchising Authority's Obligation. The Franchising Authority shall provide upon request from the Company the boundaries from time to time of the Franchise Area.

3.4            Undergrounding of Cable System. For any Cable System expansion, the Company shall place the Cable System lines and equipment underground in localities where both telephone and power lines are underground. For existing facilities (or any other aerial facilities during this Agreement), the Company shall replace aerial facilities with underground facilities if

and when other utilities are required by the Franchising Authority to place facilities underground. At no time shall the Cable System be the only aerial facility. Where undergrounding is required, the Company shall, with prior written consent of Franchising Authority, have the option of sharing or not sharing in utility trenches. Nothing in this section shall preclude the Company from placing active components, including pedestals and power supplies, above ground in areas where facilities are otherwise required to be underground, unless similar components of telecommunications providers or other cable providers are required to be underground.

3.5                    No Liability to Company. Neither the Franchising Authority nor its officers, officials, employees, agents, attorneys, consultants or independent contractors shall have any liability to the Company as a result of or in connection with the protection, movement, removal, alteration, or relocation of any part of the Cable System by or on behalf of the Company or the Franchising Authority in connection with any emergency, public work, public improvement, alteration of any municipal structure, or any change in the grade or line of any Street, as provided in this Agreement.

3.6                    Service to Public Buildings.

3.6.1                Reserved.

3.6.2                With respect to any new request after the Effective Date of this Agreement for service for a Public Building, the Company shall provide throughout the term of this Agreement, one (1) service drop, two (2) outlets and two (2) converter units if necessary, and Basic Service and Expanded Basic Service (i.e. together the equivalent of sixty (60) or more Channels of programming) or the future equivalent of such service tiers offered by Company in the Franchise Area ("Complimentary Service"), to each of the public facilities located in the Franchise Area as from time to time specified in writing by the City Administrator, which may include without limitation: City Hall; all public fire stations and police stations; all public libraries; all Governmental Programming access facilities designated by the Franchising Authority; all City and County administrative and operational buildings; all public and private accredited K-12 schools located in the Franchise Area ("Public Buildings"). Each separate unit of a jointly owned public facility shall constitute a separate Public Building for purposes of this 3.6.2 to the extent

technically feasible to provide Complimentary Service to each separate unit of a jointly owned public facility. Any Complimentary Service that Franchisee provides pursuant to this 3.6.2 shall be provided free of charge and not subject to offset against the Franchise Fee, except that Franchisee may offset against the Franchise Fee an amount equal to Franchisee's actual marginal cost of providing such Complimentary Service ("Marginal Cost"), as calculated and demonstrated in documentation submitted by Franchisee to Franchising Authority to the satisfaction of the City Engineer of Franchising Authority. Provided, however, that the requirement of such offset pursuant to this section shall be subject to any subsequent change in Applicable Law expressly or effectively limiting, reducing or eliminating such requirement.

3.6.3 For purposes of this Section 3.6, the term "Designated Representative" shall include anyone designated by the local governing body responsible for the Public Building in question. The Designated Representative may request Complimentary Service to Public Buildings which shall be made in writing. With respect to all Public Buildings in existence as of the Effective Date of this Agreement, Company shall be responsible for all costs of extension for any installation which is less than four thousand (4,000) cable feet from the Company's "activated plant," which for purposes of this Agreement means activated lines. Such Public Building shall pay any net additional drop or extension Installation Costs in excess of four thousand (4,000) cable feet. With respect to any Public Building coming into existence or relocated after the Effective Date of this Agreement, Company shall be responsible for all costs of extension for any installation which is less than two hundred (200) cable feet from the Company's activated plant and such Public Building shall pay any net additional drop or extension Installation Costs in excess of two hundred (200) cable feet.

For purposes of this Section 3.6, "Installation Costs" shall include only the Company's documented cost of: (1) necessary materials, equipment and hardware to complete the installation; and (2) required labor charged at Company's lowest hourly service charge taking into account the classification and skill level of employee(s) needed to perform. The recipient of the Complimentary Service will secure any necessary right of entry.

3.6.4 Notwithstanding anything to the contrary set forth in this Section 3.6: (i)

Company and the Franchising Authority agree that Company shall not be required to honor a Complimentary Service request to any Public Building unless it is technically feasible; and (ii) Company during the term of this Agreement also will provide free of charge to the City any additional equipment or requirements periodically necessary to receive or use any service or equipment provided pursuant to this Section 3.6.

3.6.5 Nothing in this Section 3.6 is intended to prevent a separate written agreement between any entity receiving Cable Services under the terms hereof and the Company regarding the subject matter hereof. To that end, in the event a separate written agreement with any such entity is negotiated and agreed upon, the Company shall give notice thereof to the Franchising Authority and advise therein as to the provisions of this Franchise which are no longer applicable to such entity. In no event, however, shall the Company be relieved of its obligations to meet the requirements of this Section 3.6 should such a written agreement fail to materialize, be terminated, or expire during the term of this Franchise.

3.6.6 The Franchising Authority acknowledges and agrees the Company shall have no obligation to provide Complimentary Service to any private Person or entity which is leasing space in a Public Building.

#### SECTION 4. GOVERNMENT ACCESS CHANNELS

4.1 Election and Effective Date. All provisions set forth in this Section 4 and attached Exhibit B shall apply only if the Franchising Authority elects to begin use of Government Access Channels for Governmental Programming, which election shall be made by giving at least 180 days advance written notice to the Company.

4.2 Channel Capacity. The Company shall designate channel capacity on the Basic Service tier for Governmental Programming to be provided by the Franchising Authority or its designee (which programming may be provided pursuant to an interlocal cooperation agreement in conjunction with one or more of Ralston, Papillion, Bellevue or any other governmental entity, or a board or committee of representatives authorized by said municipalities or entity and the Franchising Authority). The Franchising Authority shall have the option of initially activating up to two (2) channels for Governmental Programming. Except as otherwise provided by law, the

channels and any programming thereon shall be under the exclusive management and control of the Franchising Authority or its designee and shall be used solely for Governmental Programming. The Franchising Authority may at any time allocate or reallocate the usage of the Governmental Programming Channel(s) among and between different uses and users in the Franchising Authority's sole discretion. Company agrees to cooperate and consult with Franchising Authority, free of charge, to ensure that any purchases of equipment by Franchising Authority and installations completed by the Franchising Authority are compatible with the Company's Cable Service and Cable System, technology and reasonably foreseeable system specifications.

4.3 Channel Designations. The Company shall have sole discretion to make channel number assignments for Governmental Programming Channel. In the event the Company is required by federal law or regulations to change the channel number of a Governmental Programming Channel, the Company shall provide thirty (30) days advance notice to the Franchising Authority and its Subscribers. Should Company decide to change the channel number for any other reason, the Company shall notify the Franchising Authority of such change and the reason for the change at least thirty (30) days prior to the proposed change. Company shall use its best efforts to place Governmental Programming Channels in a consecutive or near-consecutive block of Channel numbers in reasonably close proximity to other public affairs programming (e.g., CSPAN, PBS) on the Basic Service Tier. Company agrees not to encrypt the Governmental Programming Channels any differently than commercial Channels available on the Cable System. Company agree to discuss, at the option of the Franchising Authority, working with the Franchising Authority to place educational or governmental content on the Cable System in the form of video "on demand" programming. Only upon mutual written agreement by Company and Franchising Authority may Company consolidate the Governmental Programming Channels to a single Channel on the Basic Service Tier. If mutually agreed upon, all of the Governmental Programming Channels could then be accessed either as an application on a menu or as choices on the assigned Channel. The Franchising Authority agrees to consider any reasonable proposal regarding Governmental Programming consolidation.

4.4 Additional Governmental Programming Channels. The Company shall make available up to one (1) additional Governmental Programming Channel to the Franchising Authority pursuant to this section. This Channel shall be made available if the following criteria are met:

(i) Existing Governmental Programming on each existing Governmental Programming Channel exceeds eighteen (18) hours per day, at least six (6) days per week, and this level of programming is continuous for a period of twenty-six (26) consecutive weeks;

(ii) At least 70% of such Governmental Programming is locally produced programming, of which at least twelve (12) hours per week is programming other than character generated programming.

(iii) No more than four (4) hours per day of Governmental Programming during such 26-week period represents repeat programming. For the purposes of this section "repeat" programming shall consist of programming that has already been shown at least one time on any Governmental Programming Channel during the preceding four (4) weeks. The additional Governmental Programming Channel shall be made available within 60 days following the written request of the Franchising Authority and verification of compliance with each of foregoing conditions.

4.5 Use of Unused Capacity. Whenever any Governmental Programming Channel is programmed for less than eight (8) hours per day, six (6) days per week for a continuous period of not less than 26 consecutive weeks, the Franchising Authority shall permit the Company to utilize unused channel capacity on that channel; subject to such rules and procedures as specified by Franchising Authority from time to time. Any request from the Company to use any fallow capacity designated for a Governmental Programming Channel must be submitted in writing to the Franchising Authority. If the Franchising Authority fails to act on the Company's request within sixty (60) days, it shall be deemed approved. After approval, the Company may continue to utilize the unused capacity of the channel for any other purposes it so chooses, consistent with the Franchise, until the Franchising Authority determines that all or any part of such channel capacity is needed for Governmental Programming. The Company shall be given not less than sixty (60) days to relinquish use of part of the channel back to the Franchising Authority. This provision shall not be construed to require the Franchising Authority to rearrange or reschedule any programming upon said channel.

4.6 Maximum Number of Governmental Programming Channels. The maximum number of Governmental Programming Channels, which may be required under this Agreement, shall be three (3), subject to the usage requirements in Section 4.4.

4.7 Other Requirements. Additional requirements for Governmental

Programming Channels are set forth in Exhibit B, attached hereto and incorporated herein by this reference.

## SECTION 5. FEES AND CHARGES

5.1           Rates, Fees and Charges. Before any new or modified rate, fee, charge, deposit or associated term or condition for Cable Service may be imposed, the Company must provide notice to the Franchising Authority of the change, and notify affected Subscribers. Submission of a Company rate card which reflects all current rates, fees, charges, deposits and associated terms and conditions will satisfy the requirements of this Section.

5.2           Prohibition Against Discrimination in Charges to Residential Subscribers.

The Company shall not discriminate between or among any residential Subscribers in the rates, terms and conditions for any Cable Service; provided that the foregoing requirement shall not prevent (to the extent otherwise permitted by applicable law) the use of (i) short-term sales promotions and other short-term discounts or reduced charges; (ii) reasonable discounts or reduced charges to senior citizens or economically disadvantaged groups; or (iii) bulk rate arrangements. Nothing in this section shall be construed to prevent the Company from individually negotiating the rates, terms and conditions of Cable Service provided to nonresidential customers. Notwithstanding the foregoing, Company shall not deny service, deny access or otherwise discriminate on rates or any other terms or conditions of Cable Services (or any related service provided by Company) on the basis of race, color, creed, religion, ancestry, national origin, sex, disability, age, familial status, marital status, income level, demographics, status with regard to public assistance or location within the Franchise Area.

5.3           Parental Control Devices. Upon the request of a Subscriber, the Company shall make available a device, or an application within its convertors, by which the Subscriber can block completely the video and audio signals of a particular Cable Service during periods selected by that Subscriber.

5.4           Franchising Authority's Regulation of Fees and Charges. The Franchising Authority reserves the right to regulate the Company, the Cable System and the rates, fees, charges, deposits and associated terms and conditions for Cable Service (or for related equipment or

services such as equipment rental, deposits and downgrade fees) provided pursuant to this Agreement to the fullest extent permitted by Applicable Law, as amended from time to time, and the Franchising Authority may, in connection with any such regulation, establish rules and regulations from time to time to the extent permitted by such Applicable Law. In connection with such regulation, the Franchising Authority shall comply with FCC rules as amended from time to time and provide the public with an opportunity to comment. In the event (i) the Company offers one or more cable, Internet-related, telecommunications or any other (cable or non-cable) service on a bundled basis (such that more than one service is provided at a single, combined, discounted or special fee), (ii) at least one of such bundled services is a Cable Service under this Agreement, and (iii) revenues received by the Company on at least one service provided in the bundled arrangement is not subject to any fee or tax to the Franchising Authority, or is subject to a different rate of fee or tax to the Franchising Authority than is provided for under this Agreement on Cable Services, then any discount of fees or charges of Company to Subscribers or customers obtaining bundled services shall be applied proportionately to the fee of each service provided under the arrangement such that it is not applied disproportionately to Cable Services provided under this Agreement.

## SECTION 6. CUSTOMER SERVICE

Company shall meet all customer service standards attached hereto as Exhibit A and incorporated herein by this reference.

## SECTION 7. COMPENSATION AND OTHER PAYMENTS

7.1.1        Compensation to the Franchising Authority. As compensation for the use of the Public Rights-of-Way, the Company shall pay to the Franchising Authority the amounts set forth in this Section 7.

7.1.2        Franchise Fees for Cable Service. The Company shall pay to the Franchising Authority a franchise fee equal to five percent (5%) of Gross Revenue. The five percent (5%) franchise fee includes compensation for Right-of-Way use by the Franchisee. For purposes of the Franchise Fee to be paid by Company under this Agreement, in the case of Cable

Service that may be bundled or integrated functionally with other services, capabilities, or applications of Company, the fee shall be applied only to the Gross Revenues attributable to Company's Cable Service as reflected on the books and records of Company kept in the regular course of business in accordance with Generally Accepted Accounting Principles and applicable law.

7.1.3        Franchise Fees - Payment. All such payments of franchise fees shall be made on a quarterly basis, not later than forty-five (45) days after the last day of each calendar quarter, and shall be remitted simultaneously with a report setting forth the Gross Revenue for the period ending on said last day. Unless otherwise directed by the City Administrator or the City Administrator's designee, the Company shall provide such information using the form attached hereto and incorporated by reference as Exhibit C. Any amount not paid when due hereunder shall accrue interest at twelve percent (12%) per annum or the prime lending rate published by the Wall Street Journal on the day the payment was due plus two percent (2%), whichever is greater, subject to any limitation on the interest rate under Applicable Law.

7.1.4        Franchise Fee Payments Subject to Audit. No acceptance of any franchise fee payment by the Franchising Authority shall be construed as an accord and satisfaction that the amount paid is in fact the correct amount or a release of any claim that the Franchising Authority may have for further or additional sums payable or any other claim under this Agreement, and all amounts paid shall be subject to audit and recomputation by the Franchising Authority. Company, at its expense, shall periodically provide to City an independent audit of franchise gross receipts, and shall annually provide such an audit for the twelve month period chosen by Franchising Authority.

7.1.5        Franchise Fees Change in Rate. Upon ninety (90) days advance written notice from Franchising Authority to Company, the Franchising Authority may increase or decrease the Franchise Fee to the extent permissible under Applicable Law, and pursuant to said notice and direction, Company shall pay to the Franchising Authority an annual Franchise Fee of up to the maximum amount permitted by Applicable Law. At any time during the duration of this Franchise, in the event that the City is authorized to collect an amount in excess of five percent (5%) of Gross Revenues, then the City may unilaterally amend this Franchise after holding a duly

noticed public hearing to provide that such excess amount shall be added to the Franchise Fee payments to be paid by Company to the City hereunder, provided that Company has received at least ninety (90) days prior written notice from the City of such amendment and that all other providers of cable services in the Franchise Area are subject to the same increase in Franchise Fees.

7.1.6            Continuing Obligation. In the event the Company continues to operate all or any part of the Cable System after the term of this Agreement, then the Company shall continue to comply with all applicable provisions of this Agreement, including, without limitation, all compensation and other payment provisions of this Agreement, throughout the period of such continued operation, provided that any such continued operation shall be for a period not to exceed ninety (90) days thereafter and in no way be construed as a renewal or other extension of this Agreement or the Franchise.

7.3.            Other Payments. The franchise fees provided under this section 7 are in addition to any other amounts that may be due the Franchising Authority by Company from time to time, including, but not limited to taxes and permit fees. Franchisee shall pay within 60 days of the Effective Date of this Franchise Agreement all franchise fees remaining under any prior franchise between Franchisee and Franchising Authority.

## SECTION 8. OVERSIGHT AND REGULATION

8.1            Franchising Authority's Right of Oversight. The Franchising Authority shall have the right to oversee, regulate, and periodically inspect the construction, operation, maintenance and upgrade of the Cable System, and all parts thereof, as necessary to ensure compliance with the provisions of this Agreement. Company shall perform its obligations under this Agreement and shall not directly or indirectly contract, assign or subcontract any obligation or performance in whole or in part to any other Person.

8.2            Reports. At the request of the Franchising Authority, the Company shall promptly submit to the Franchising Authority such reasonable information as the Franchising Authority may request regarding the Company's compliance with any term or condition of this Agreement.

### 8.3 Company To Maintain Books, Records and Files

8.3.1 Books and Records. Throughout the term of the Agreement, the Company shall maintain in the Franchise Area, or make available in the Franchise Area within thirty (30) business days, complete and accurate maps, books of account and records regarding the Company's ownership and operation of the Cable System and the provision of Cable Service over the Cable System, including without limitation, books of account and records adequate to enable the Franchising Authority to determine whether the Company is, and throughout the term of this Agreement has been, in compliance with this Agreement. All such documents pertaining to financial matters which may be the subject of an audit by the Franchising Authority shall be retained by the Company for a minimum of five (5) years, unless a shorter period of time is authorized by the City Administrator or her designee in writing. Upon request by the Franchising Authority, the Company agrees to provide for review of the City at City Hall either a list of all shareholders holding ten percent (10%) or more of its outstanding shares or a chart or similar document stating its ownership structure that includes the ultimate parent company. Upon request, the Company shall provide the Franchising Authority with copies of publicly available financial reports that Company files with any government agency.

8.3.2 File for Public Inspection. Throughout the term of this Agreement, the Company shall maintain, in a file available for public inspection during Normal Business Hours, in the Franchising Area those documents required pursuant to the FCC's rules and regulations.

### 8.4 Franchising Authority's Rights of Inspection and Audit

8.4.1 Right of Inspection General. Upon reasonable prior notice to the Company and during Normal Business Hours, the Franchising Authority or its designated representatives, shall have the right to examine, in the Franchise Area, all books and records pertaining to the Company's performance under the terms of this Agreement. Further, during Normal Business Hours and upon notice to the Company, the Franchising Authority or its designated representatives may inspect and examine any other aspect of the Cable System, including facilities and equipment thereof, as necessary or appropriate to ensure compliance with this Agreement.

8.4.2 Franchising Authority May Conduct Compliance Audit and Hearings. To the extent permitted by Applicable Law, the Franchising Authority may conduct a compliance audit and hold

public hearings at any time during the term of the Franchise, provided it gives the Company (1) written notice thirty (30) business days in advance of the commencement of any such audit and (2) written notice, of the time and place of such public hearing, ten (10) business days in advance of such hearing, and provided further that the Company shall be given an opportunity to be heard.

8.5 The performance bond described in Section 10.2 shall become the property of the Franchising Authority in the event that Company's Franchise is cancelled by reason of default of the Company. The Company, however, shall be entitled to the return of the performance bond, or remaining portion thereof, as remains at the expiration of the term of this Agreement, provided that there is no then outstanding default or existing obligation on the part of the Company.

## SECTION 9. TRANSFERS AND ASSIGNMENTS

### 9.1 Transfer of Franchise or Interest Therein.

9.1.1 Consent Generally Required. (A) Company shall not sell, transfer, lease, assign, sublet, encumber, pledge, deed, grant, mortgage or dispose of in whole or in part, either voluntarily or involuntarily, by forced or involuntary sale or transfer, or by ordinary or voluntary sale, transfer, consolidation or otherwise, the Franchise and/or Cable System or any right, title or interest therein, or rights or privileges granted by the Franchise ("Transfer"), without the prior consent of the City Council of the Franchising Authority, which consent shall not be unreasonably withheld; though the Franchising Authority shall have the option to grant consent, grant consent subject to specified conditions, or deny consent. Any attempt to Transfer, the Franchise and/or Cable System without the consent of the City Council of the Franchising Authority shall be null and void. This provision shall not apply to sales of property or equipment in the normal course of business. No consent from the city shall be required for a transfer in trust, mortgage, or other instrument of hypothecation, in whole or in part, to secure an indebtedness.

(B) The following events shall be deemed to be a Transfer of the Franchise and/or Cable System requiring compliance with this section: (i) the sale, assignment or other transfer of all or a majority of Company's assets; (ii) the sale, assignment or other transfer of capital

stock or partnership, membership or other equity interest in Company or its parent by one or more of its existing share holders, partners, members or other equity owners so as to create a new controlling interest in Company or its parent; (iii) the issuance of additional capital stock or partnership, membership or other equity interest by Company or its parent so as to create a new controlling interest in Company or its parent; and (iv) the entry by Company into an agreement with respect to the management or operation of the Company and/or the System. The term controlling interest as used herein means majority equity ownership.

(C) In the case of any Transfer of any Franchise and/or Cable System the City shall have one hundred twenty (120) days to act upon any request for approval of such Transfer that contains or is accompanied by such information as is required in accordance with Federal Communications Commission Regulations, the requirements of this Agreement and such other reasonable information as the City, in its sole discretion, may request. If the City fails to render a final decision on the request within one hundred twenty (120) days from receipt by the City of all required information, such request shall be deemed granted unless the requesting party and the City agree to an extension of time.

(D) Company shall notify Franchising Authority in writing upon learning of any pending or proposed foreclosure or other judicial, trustee or other sale of all or a substantial part of the Franchise property of the Company or upon the termination of any lease or interest covering all or a substantial part of said Franchise property. Such notification shall be considered by Franchising Authority as notice that a Transfer of the Franchise has taken place and the provisions under this Section governing the consent of Franchising Authority to such change in control of ownership shall apply.

(E) For the purpose of determining whether it shall consent to such change, Transfer, or acquisition of control, Franchising Authority may inquire into the legal, technical and financial qualifications of the prospective transferee or controlling party, and obtain any other information or make any other inquiry as the Franchising Authority deems necessary or appropriate, and Company shall assist Franchising Authority in any such inquiry. In seeking Franchising Authority's consent to any Transfer, Company shall have the responsibility of insuring that the transferee completes an application in form of FCC Form 394. The application shall be submitted to Franchising Authority not less than ninety (90) days prior to the date of Transfer. The

transferee shall be required to establish that it possesses the legal, technical and financial qualifications to operate and maintain the System and comply with all Franchise requirements for the remainder of the term of the Franchise. If, after considering the legal, financial and technical qualities of the applicant and determined that they are satisfactory, the Franchising Authority finds that such Transfer is acceptable, the Franchising Authority shall transfer and assign the rights and obligations of such Franchise. The consent of the Franchising Authority to such Transfer shall not be unreasonably denied.

(F) Any financial institution having a pledge of the Company or its assets for the advancement of money for the construction and/or operation of the Franchise shall have the right to notify the Franchising Authority that it or its designee satisfactory to the Franchising Authority shall take control of and operate the Cable Television System, in the event of a Company default in its financial obligations, subject to approval of Franchising Authority. Further, said financial institution shall also submit a plan for such operation within thirty (30) days of assuming such control that will insure continued service and compliance with all Franchise requirements during the term the financial institution exercises control over the System. The financial institution shall not exercise control over the System for a period exceeding one (1) year unless extended by the Franchising Authority in its discretion and during said period of time it shall have the right to petition the Franchising Authority to transfer the Franchise to another Company. Company shall pay or reimburse costs of the Franchising Authority to analyze, consider or make a decision regarding any proposed Transfer.

9.1.2 Transactions for Which Consent is Not Required. The prior consent of the Franchising Authority shall not be required with respect to intra corporate transfers or reorganizations between or among wholly owned or controlled subsidiaries of the Company, or any Affiliate of the Company; provided, however, that any such transaction that constitutes a direct or indirect Transfer shall require prior consent of the Franchising Authority pursuant to 9.1.1. The Franchising Authority will be given at least thirty (30) days prior written notice of any such transaction, and will be provided any such information as may be reasonably requested by the Franchising Authority.

## SECTION 10. SPECIFIC RIGHTS AND REMEDIES

10.1                    Remedies Not Exclusive. The Company agrees that the Franchising Authority shall have the specific rights and remedies set forth in this Section 10. These rights and remedies are in addition to any and all other rights or remedies, now or hereafter available to the Franchising Authority to enforce the provisions of this Agreement, and will not be deemed waived by the exercise of any other right or remedy. The exercise of any such right or remedy by the Franchising Authority shall not release the Company from its obligations or any liability under this Agreement, except as expressly provided for in this Agreement or as necessary to avoid duplicative recovery from or payments by the Company.

10.2                    Performance Bond. Within thirty (30) days after the Effective Date, the Company shall deposit with the Clerk of the Franchising Authority a performance bond from a surety authorized to do business in the State of Nebraska and acceptable to the Franchising Authority in the minimum amount of One Hundred Thousand Dollars (\$100,000). The form and content of such performance bond shall be subject to the approval of the Franchising Authority and shall contain a provision that the issuer of such performance bond can rely absolutely on the demand of the Franchising Authority upon said performance bond. The performance bond shall be used to ensure the faithful performance by Company of all provisions of this Agreement, including payment of franchise fees; compliance with all orders, permits and directions of any agency, commission, board, department, division, or office of the Franchising Authority having jurisdiction over its acts or defaults under this Agreement; and the payment by Company of any claims, liens, and taxes due the Franchising Authority which arise by reason of the construction, operation or maintenance of the Cable System.        The performance bond shall be maintained at the minimum amount of One Hundred Thousand Dollars (\$100,000) during the entire term of this Franchise, even if amounts have to be withdrawn pursuant to this section and shall remain in effect for sixty (60) days after the conclusion or termination of this Agreement.

(i)                    If Company fails to pay the Franchising Authority any amount within the time fixed herein, or fails to pay to the Franchising Authority any taxes due and unpaid, or fails to pay or repay the Franchising Authority within ten (10) days any damages, costs, or expenses which the Franchising Authority is compelled to pay by reason of the acts or default of Company in connection with the Franchise, or fails after receipt of thirty (30) days' written notice

of such failure by the Franchising Authority to comply with any provision of this Franchise which the Franchising Authority reasonably determines can be remedied by an expenditure of money, the Franchising Authority may, subject to Section 10 herein, demand and receive payment of the amount thereof, with interest, under the performance bond. Upon such demand for payment, the Franchising Authority shall notify Company of the amount and date thereof.

(ii) The performance bond shall contain the following endorsement: "It is hereby understood and agreed that this performance bond may not be canceled by the issuer hereof nor the intention not to renew be stated by the issuer hereof until thirty (30) days after receipt by the Franchising Authority, City of La Vista, Nebraska, by registered mail of a written notice of such intention to cancel or not to renew." Within thirty (30) days after receipt by the Franchising Authority of said notice, the Company shall obtain and furnish to the Franchising Authority a replacement performance bond in a form reasonably acceptable to the Franchising Authority.

### 10.3 Events of Default

10.3.1 Grounds. The Company agrees that an Event of Default ("Event of Default") shall include but shall not be limited to, any of the following acts or failures to act by the Company:

(i) Company's material breach or violation of any of the terms, covenants, representations or warranties contained herein or Company's failure to perform any obligation hereunder;

(ii) The foreclosure or other similar judicial or nonjudicial sale or Transfer of all or any material part of the Cable System, except as approved by the Franchising Authority pursuant to Section 9;

(iii) The condemnation by a public authority other than the Franchising Authority, or sale dedication under threat or in lieu of condemnation, of all or any material part of the Cable System;

(iv) The suspension or discontinuance of business by the Company;

(v) Any denial, forfeiture or revocation by any federal, state or local governmental authority of any authorization required by law or the expiration without renewal of any such authorization;

(vi) Company's failure to pay the franchise fee or any amount due under this Agreement;

(vii) Company's failure to pay any taxes of any kind, including, but not limited

to, property and income taxes, on or before the due date for the same; provided, however, that Company shall not be in default with respect to any taxes that have not been paid because they are being disputed in good faith;

(viii) The entry of any judgment against Company that remains unpaid for longer than forty-five (45) days after entry (and is not stayed pending rehearing or appeal) which would materially impair Company's ability to provide Cable Services in the Franchise Area;

(ix) Dissolution or termination of the Company for any reason; or

(x) Company's voluntary or involuntary filing in bankruptcy, insolvency, transfer for the benefit of creditors, failure to pay debts as they come due or any attempt to obtain protection from creditors.

**10.3.2 Franchising Authority Action Upon Occurrence of Event of Default.** Upon the occurrence of an Event of Default, as set forth in Section 10.3.1, and in accordance with the procedures provided in Section 10.3.3, the Franchising Authority may take one or more of the following actions (in addition to, and not in limitation of, any other action, right or remedy available at law or equity):

(i) Require the Company to take such actions as the Franchising Authority deems reasonably appropriate to cure such Event of Default;

(ii) Seek money damages from the Company as compensation for such Event of Default;

(iii) Seek to obtain the appointment of a court-appointed trustee or similar Person to take any actions which the Franchising Authority deems appropriate in the circumstances;

(iv) Terminate this Agreement, in which case, the Franchise shall be forfeited; or

(v) Commencement of an action at law for monetary damages or in equity for injunctive relief or specific performance.

**10.3.3 Breach Procedures.** The Franchising Authority shall exercise the rights provided in Section 10.3.2 in accordance with the procedures set forth below.

(i) The Franchising Authority shall notify the Company, in writing, of an Event of Default, which notice shall specify the alleged Event of Default with reasonable particularity. If the Event of Default is due to failure of the Company to pay money to Franchising Authority, Company shall cure the default by paying the full amount of any undisputed amount

due with interest within thirty (30) days after the date notice is given. For an Event of Default which can not be cured by the payment of money to Franchising Authority, Company shall have sixty (60) days after notice is given to cure the Event of Default. If the Event of Default is not cured, the Event of Default and proposed termination of the Franchise shall be considered by the City Council in accordance with such notices, public hearings and other procedural requirements as required by applicable law.

10.4 Termination. In the event of any termination of this Agreement, whether by expiration, revocation or otherwise, the Franchising Authority may: (i) direct the Company to cooperate with the Franchising Authority or third party in maintaining continuity in the distribution of Cable Service to Subscribers over the Cable System for a period of up to three (3) months or (ii) order the Company to cease all construction and operational activities in a prompt and workmanlike manner. In addition, the Company shall remove the Cable System from the Franchise Area as and when specified by the Franchising Authority and the Franchising Authority shall retain any franchise fees or other fees or payments already paid, and Company shall immediately pay all other amounts that are due and payable, upon the termination date. Company shall simultaneously submit to Franchising Authority a financial statement as would otherwise be required under this Agreement, showing all amounts that are due and payable upon the termination date.

10.5 New Legal Requirements. Franchising Authority shall have the option to reopen this Franchise Agreement within 90 days of any applicable federal or state law, regulation, rule or order that becomes effective after the Effective Date and affects the right of the Franchising Authority to regulate rates or protect Subscribers of Cable Services, and only those matters directly affected by the legislation shall be at issue in the event the Franchise Agreement is reopened.

## SECTION 11.

### INSURANCE AND INDEMNITY

#### 11.1 Insurance

##### 11.1.1 Specifications

(a) Liability Insurance. Throughout the term of this Agreement and during the removal of the Cable System, the Company shall, at its own cost and expense, maintain a liability insurance policy or policies that are in a form and content acceptable to the Franchising Authority. Such policy or policies shall be issued by companies duly licensed to do business in the State of Nebraska and acceptable to the Franchising Authority. Such policy or policies shall insure (i) the Company and (ii) the Franchising Authority and its officers, boards, commissions, councils, elected officials, agents and employees against each and every form of liability of the Company or Franchising Authority arising out of or resulting from Company's work, acts, or omissions under this Agreement in the minimum combined amount of Five Million Dollars (\$5,000,000) for all claims arising out of a single occurrence.

(b) Workers' Compensation. The Company shall comply with the Nebraska Workers' Compensation Act and in that regard shall during this Agreement and removal of the Cable System secure insurance from an insurer licensed in the State of Nebraska and acceptable to the Franchising Authority to cover its obligations with respect to workers' compensation claims, or takes other appropriate steps, which insurance and steps shall be in form and substance satisfactory to the Franchising Authority. The Company shall indemnify and hold harmless the Franchising Authority and its officers, boards, commissions, councils, officials, agents and employees from any workers' compensation claims to which the Company may become subject during the term of this Agreement or removal of the Cable System.

(c) Other Coverages. The Company shall at all times during this Franchise and the removal of the Cable System also maintain the following types of insurance, written by an insurer licensed in the State of Nebraska and acceptable to the Franchising Authority (and in form and content acceptable to the Franchising Authority) to indemnify, defend and hold harmless Franchising Authority and its officers, boards, commissions, councils, officials, agents and employees from and against the specified risks:

- (i) \$5,000,000 per occurrence property damage insurance.
- (ii) \$1,000,000 per person, \$5,000,000 per occurrence comprehensive automobile liability insurance.

11.1.2        Maintenance. The insurance policies required by Section 11.1 shall be maintained by the Company throughout the term of this Agreement and such other period of time during which the Company operates or is engaged in the removal of the Cable System. Each such policy shall contain the following endorsement: "It is hereby understood and agreed that this policy may not be canceled, the amount or extent of coverage decreased, nor the intention not to renew be stated until (30) days after receipt by the Franchising Authority, by registered mail, of a written notice of such intent to cancel, decrease coverage or not to renew." Within thirty (30) days after receipt by the Franchising Authority of said notice, the Company shall obtain and furnish to the Franchising Authority replacement insurance policies in a form reasonably acceptable to the Franchising Authority. Except with respect to any worker's compensation policy, the Franchising Authority and each of the parties for which insurance protection is to be provided by Company under this Agreement shall be designated in the governing policies as additional named insureds. Within thirty (30) days after the Effective Date, and at such other times as requested by Franchising Authority, Company shall provide Franchising Authority with certificates of insurance evidencing the coverages in effect in accordance with this Section 11. Failure to maintain the insurance required by this Section 11 shall be a material breach of this Agreement.

11.1.3        Increased Insurance Coverage. In the event of any changed circumstances following the Effective Date, if the Franchising Authority wishes to alter the minimum limitation of the liability insurance policy or policies required in Section 11. 1.1, then the Franchising Authority and the Company shall negotiate such alteration in good faith.

11.1.4        Liability Not Limited. The legal liability of the Company to the Franchising Authority and any Person for any of the matters which are the subject of the liability insurance policies required by this Section 11.1 including, without limitation, the Company's indemnification obligations set forth in this Agreement, shall not be limited by such insurance policies nor by the recovery of any amounts thereunder, except to the extent necessary to avoid duplicative recovery from or payment by the Company.

11.2        Indemnification of the Franchising Authority. Company shall defend, indemnify, and hold harmless the Franchising Authority, its officers, officials, employees,

agents, attorneys, consultants, boards, commissions, representatives and independent contractors from and against any and all liabilities, costs, claims, damages, penalties, charges, losses or expenses of any kind (including, without limitation, attorneys' fees and court costs) in any way arising out of or resulting from: (a) the construction, installation, operation, maintenance, repair, upgrade or removal of, or any risk, event or occurrence related to, the Cable System or any part thereof or activity or function related thereto, or to any Cable Service or the production or distribution thereof, (b) any other Company property, (c) the failure of Company or any of its officers, agents, employees, successors, or assigns to comply with any applicable federal, state or local law, rule, regulation or order, or (d) any act, omission or negligence of Company, its officers, agents, employees, successors or assigns.

## SECTION 12. MISCELLANEOUS

12.1        Controlling Authorities. This Agreement is made with the understanding that its provisions are controlled by and subject to the Cable Act, other federal laws, state laws of Nebraska, and all applicable local laws, ordinances, and regulations, as amended from time to time. Incorporated herein by reference and made a part of this Franchise Agreement are all La Vista Municipal Ordinances. In the event of a conflict between this Franchise Agreement and any La Vista Municipal Ordinance, this Franchise Agreement will control.

12.2        Nonexclusive Franchise. Nothing in this Agreement shall affect the right of the Franchising Authority to grant to any Person a franchise, consent, or right to occupy and use the Streets, or any part thereof; for the construction, operation, or maintenance of all or any part of a cable system within the Franchising Area or for any other purpose. This Franchise Agreement does not establish any priority for the use of the Rights-of-Way by the Franchisee or by any other current or future franchisee or permit holder. In the event of any dispute as to priority of use of the Rights-of Way in the Franchising Area, the priority shall be determined by the Franchising Authority in the exercise of its powers, including the police power and other powers reserved to and conferred on it by the State of Nebraska.

12.3        Entire Agreement. This Agreement embodies the entire understanding and agreement of the Franchising Authority and the Company with respect to the subject matter

hereof and merges and supersedes all prior representations, agreements, and understandings, whether oral or written, between the Franchising Authority and the Company with respect to the subject matter hereof, including, without limitation, all prior drafts of this Agreement and any and all written or oral statements or representations by any official, employee, agent, attorney, consultant or independent contractor of the Franchising Authority or the Company.

12.4            Notices. All notices shall be in writing and shall be sufficiently given and served upon the other party when deposited in the first class mail, registered or certified, return receipt requested, postage prepaid, and addressed as follows:

THE FRANCHISING AUTHORITY:

City Clerk  
City of La Vista, Nebraska  
8116 Parkview Boulevard  
La Vista, Nebraska 68128

COMPANY:        Great Plains Communications LLC  
                  P.O. Box 500  
                  Blair, NE 68008

Attn: Colin Lndl, Director of FTTH

With Copy to:    Great Plains Communications LLC  
                  P.O. Box 500Blair, NE 68008Attn: Legal Department

12.5            Delays and Failure Beyond the Control of the Company. Notwithstanding any other provision of this Agreement, the Company shall not be liable for delay in performance of, or failure to perform, in whole or in part, its obligations pursuant to this Agreement due to events beyond its control, including but not limited to, strike, war or act of war (whether an actual declaration of war is made or not), insurrection, riot, act of public enemy, accident, fire, flood or other act of God, technical failure, sabotage, or other events beyond its control. In the event that such delay in performance or failure to perform affects only part of the Company's capacity to perform, the Company shall perform to the maximum extent it is able to do so and shall take all such steps within its power to correct such cause(s). The Company agrees that in

correcting such cause(s), it shall take reasonable steps to do so in as expeditious a manner as possible.

12.6                    Additional Representations and Warranties. In addition to the representation, warranties, and covenants of the Company to the Franchising Authority set forth elsewhere herein, the Company represents and warrants to the Franchising Authority and covenants and agrees (which representations, warranties, covenants and agreements shall not be affected or waived by any inspection or examination made by or on behalf of the Franchising Authority) that, as of the Effective Date:

(i)                      The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and is duly authorized to do business in the State of Nebraska and in the Franchising Area.

(ii)                     The Company is in substantial compliance with all laws, ordinances, decrees and governmental rules and regulations applicable to the Cable System and shall obtain and maintain in effect all government licenses, permits, and authorizations necessary for the operation and maintenance of the Cable System.

12.7                    Maintenance of Cable System in Good Working Order. Until the termination of this Agreement and the satisfaction in full by the Company of its obligations under this Agreement, the Company agrees that it will maintain all of the material properties, assets and equipment of the Cable System, and all such items added in connection with any upgrade in good repair and proper working order and condition throughout the term of this Agreement. The Company, within a reasonable timeframe, as determined by industry standards and Applicable Law, shall at all times during the term of this Agreement upgrade and maintain the Cable System to provide similar technical capabilities, capacity, performance and functionality for the provision of Cable Services as other similarly situated cable systems operated by Company in the metropolitan area in which the Franchise Area is located.

12.8                    Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted transferees and assigns. All of the provisions of this Agreement apply to the Company, its successors, and assigns.

12.9                    No Waiver: Cumulative Remedies. No failure on the part of the

Franchising Authority or the Company to exercise, and no delay in exercising, any right or remedy hereunder including, without limitation, the rights and remedies set forth in Section 10 of this Agreement, shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or remedy preclude any other right or remedy. The rights and remedies provided herein including, without limitation, the rights and remedies set forth in Section 10 of this Agreement, are cumulative and not exclusive of any remedies provided by law or in equity, and nothing contained in this Agreement shall impair any of the rights or remedies of the Franchising Authority under applicable law or in equity.

12.10                    Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.

12.11                    No Agency. The Company shall conduct the work to be performed pursuant to this Agreement as an independent contractor and not as an agent of the Franchising Authority.

12.12                    Governing Law. This Agreement shall be deemed to be executed in La Vista, Nebraska and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of Nebraska, as applicable to contracts entered into and to be performed entirely within that State and such other laws of the State as are applicable to the Agreement or the subject matter thereof.

12.13                    Claims Under Agreement. The Franchising Authority and the Company, agree that, except to the extent otherwise required by the Cable Act, any and all claims asserted by or against the Franchising Authority arising under this Agreement or related thereto shall be heard and determined either in a court of the United States ("Federal Court") located in Nebraska or in a court of the State of Nebraska of appropriate jurisdiction. To effectuate this Agreement and intent,

the Company agrees that if the Franchising Authority initiates any action against the Company in Federal Court or in a Nebraska court, service of process may be made on the Company either in person, wherever such Company may be found, or by registered mail addressed to the Company at its office in the Franchise Area as required by this Agreement, or to such other address as the Company may provide to the Franchising Authority in writing.

12.14                    Modification. Except as otherwise provided in this Agreement or applicable law, no provision of this Agreement, shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the Franchising Authority and the Company, which amendment shall be authorized on behalf of the Franchising Authority through the adoption of an appropriate resolution, ordinance or order by the Franchising Authority, as required by Applicable Law. The parties recognize the right of the Franchising Authority to adopt or amend local ordinances pursuant to its authority under the laws of the State of Nebraska, and the Company agrees to abide by such ordinances, except to the extent contrary to the Company's contractual rights under this Agreement.

12.15                    Headings. Headings used in this Agreement are for convenience only and have no substantive effect or consequence, except for headings used in the Definitions sections.

12.16                    Other Matters. This Agreement authorizes the Franchisee to use the Rights-of-Way of the Franchising Area for the purpose of providing the Cable Services over the Cable System. The parties acknowledge and agree that the issuance of this Franchise Agreement is not an agreement, acquiescence or a waiver of any right, remedy or defense of Franchising Authority or Franchisee with respect to the use of the Rights-of-Way for purposes other than the operation of the Cable System to provide Cable Services.

12.17                    Reserved Rights. Notwithstanding anything in this Agreement to the contrary, this Franchise Agreement is subject to the Franchising Authority's: right to control, manage and regulate Rights- of-Way and other public property; ordinances related to the subject matter of this Agreement, as amended from time to time, and not expressly revoked by this Agreement; right to install or maintain without charge any equipment or lines of the Franchising

Authority on the poles or in conduit of the Company, so long as such use does not interfere or compete with Cable Services provided by Company; and right to require upon expiration or termination of this Agreement that the Franchisee remove at its own cost and expense any or all of the Cable System.

12.18                    Abandonment. Any property abandoned by the Company shall become, at the option of the City, property of the City and the Company agrees to execute and deliver an instrument in writing, transferring its ownership interest in any such property to the City.

12.19                    Nondiscrimination. Notwithstanding anything in this Agreement to the contrary, during the performance of this Franchise, (i) neither Company nor any subcontractor of Company, performing work on behalf of Company pursuant to this Franchise, shall discriminate against any employee or applicant for employment, to be employed in the performance of this Agreement, with respect to the employee's or applicant's hire, tenure, terms, conditions, or privileges of employment, because of race, color, religion, sex, disability, or national origin.; and (ii) City is a recipient of federal funds and is required to comply with certain contractual provision of a recipient of federal funds required under Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972 , the Age Discrimination Act of 1975, as well as other federal Acts, statutes, regulations, executive orders and other authorities. To the extent applicable, all such contractual provisions shall be deemed incorporated into this Agreement by this reference and shall be binding upon the parties.

Agreed to as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

GREAT PLAINS COMMUNICATIONS LLC

By: \_\_\_\_\_

Nicholas Holle, General Counsel

Date: \_\_\_\_\_

ATTEST: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**PINPOINT BROADBAND LLC**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**CITY OF LA VISTA**

By: \_\_\_\_\_

Douglas Kindig  
Mayor

ATTEST: \_\_\_\_\_  
Pamela A. Buethe, MMC  
City Clerk

*[THIS PAGE INTENTIONALLY LEFT BLANK EXHIBITS A THROUGH C FOLLOW]*

## Exhibit A

### SECTION 6. CUSTOMER SERVICE

6.1 Customer Service Standard. Company shall comply with the more stringent of the customer service and protection standards: (i) set forth in this Agreement, (ii) adopted from time to time by Company, or (iii) from time to time adopted by the FCC. To the extent permitted under federal law, Franchising Authority reserves the right to amend or revise the standards referred to in this Section 6.1 from time to time by ordinance upon 60 days advance notice to Company.

6.2 Selection of Service. Company shall only charge Subscribers for Cable Services that Subscribers affirmatively request and shall not engage in "negative option" marketing or charge a Subscriber for any service or equipment which the Subscriber has not affirmatively requested.

6.3 Billing. Billings for Cable Services shall state in a conspicuous and understandable manner the amount of the bill, the date that payment is due, the date after which charges for late payment will be assessed, and the amount of any charges for late payment. Company shall not assess any charges for late payment earlier than twenty-one (21) days after a bill is mailed to a Subscriber. Charges for late payment shall be no greater than amounts charged a majority of the Company's cable customers in the Omaha metropolitan area.

6.4 Service Calls. Company shall require any person providing services in the community for or on behalf of Company to wear a uniform with a clearly visible Company logo and identification badge bearing the name and picture of the person wearing the same. Company shall account for all identification badges and uniforms at all times. Company vehicles used for service calls shall be clearly marked with a visible Company logo. Company shall not charge any Subscriber for any service call unless it is established that the required service is a result of negligence of, or malicious destruction of cable equipment by, the Subscriber, or a problem that did not originate with the Cable System. Subscribers within the Franchise Area shall receive the same priority of service from the Company, its parent company and any of their respective affiliates as similarly situated Subscribers within any cable television franchise area located within a fifty (50) mile radius of La Vista City Hall, located at 8116 Parkview Boulevard, La Vista, NE 68128.

6.5 Disconnection. Company shall promptly disconnect Cable Service upon, and as of the effective date specified in, a request of any Subscriber. If no effective date is specified in a request, service shall terminate effective the day following day the request is received by the Company. Company shall not charge for any Cable Services after the effective date of termination of service. Company may disconnect Cable Services to a Subscriber (i) forty-five days (45) after payment is due so long as Company provides at least ten (10) days advance written notice to the Subscriber specifying the date that service will terminate (except Cable Service shall not be disconnected in the event nonpayment is due to a bona fide dispute regarding the Subscriber's bill); or (ii) at any time that the Company reasonably and in good faith determines that the Subscriber tampered with or abused the Company's equipment or the Cable System or is stealing Cable Services, or determines that wiring on the premises (not provided by Company) violates FCC standards.

6.6 Information to Subscribers. Company shall provide to Subscribers upon request or installation of Cable Services, and in any event at least annually, a written description in easily

understandable language of Cable Services (and any related services) offered, all rates, prices, fees and charges for or in any way related to Cable Services, installation and maintenance policies and procedures, instructions on the use of Cable Services, billing and complaint procedures, and the designation of programming to channels.

6.7 Customer Contacts. Company shall maintain within the Omaha metropolitan area (or at such other location as agreed to by the Franchising Authority and Company) a local office serving the Franchising Area, for the purposes of receiving payment of bills, receiving and responding to service requests, receiving and resolving Subscriber complaints and similar matters. Company also shall maintain a local toll-free telephone service for responding to Subscribers. The office shall be open to the public and the live telephone service available during Normal Business Hours, and a live operator or telephone answering service will be available at all other times. Company shall maintain for a period of five years a record of each Subscriber complaint, response thereto and resolution thereof which shall be available for inspection by the Franchising Authority at the Company's local office during Normal Business Hours. In addition, upon request by the Franchising Authority, Company shall provide reports of customer service performance, including the number of telephone calls received and Company's resolution of the same, to the extent permitted by applicable law. The Company shall, upon request of the Franchising Authority, annually furnish the Franchising Authority with: (i) a report showing the number of Basic Service tier Subscribers; and (ii) a summary of how the Company resolved all written complaints forwarded to it by the Franchising Authority from Subscribers concerning the operation of the Cable System or Service. The Franchising Authority agrees that it shall use its best efforts to keep any such reports generated by the Company as confidential, except as necessary or appropriate to exercise its right under this Agreement.

6.8 Service Interruptions. Company shall interrupt Cable Service only for good cause and for the shortest possible time unless otherwise permitted under applicable law. Company shall minimize the scope, degree and duration of any interruption. In the event of any foreseeable interruption of Cable Service, Franchisee shall give the Franchising Authority advance written notice of the same except in the event the interruption is pursuant to a test required by the FCC. Company shall credit Subscribers pro rata for any Cable Services not received during an interruption. To minimize any service interruptions due to loss of electric power, Company shall maintain a backup power source sufficient to operate the Cable System for up to four (4) hours if there is a loss of conventional electric power.

6.9 Cable Information. Company shall not create, record or retain any information regarding the programming selected by any Subscriber nor shall Company sell, distribute, provide or make available to any Person (other than to Franchising Authority pursuant to applicable law or its role as franchiser) any information about or related to any Subscriber without the Subscriber's prior written authorization, except for such disclosure as necessary to carry out this Franchise Agreement, to provide Cable Services or detect unauthorized reception of any Cable Services.

6.10 Other Service Requirements. Company additionally shall comply with the following requirements:

(i) Company shall, upon request, provide City with information which shall describe in detail Company's compliance with each and every term and provision of this Exhibit A.

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

(iii) Late fees. Company shall comply with all applicable laws with respect to any assessment, charge, cost, fee or sum, however characterized, that the Company imposes upon a Subscriber for late payment of a bill. The City reserves the right to enforce Company's compliance with all applicable laws to the maximum extent legally permissible.

(iv) Disputes. All Subscribers and members of the general public may direct complaints regarding Company's Service or performance to the City Administrator or the City Administrator's designee, which may be a person, entity, board or commission.

(v) Removal of facilities. Upon termination of Cable Service to any Subscriber, at the written request of the Subscriber the Company shall at its own expense, promptly remove all of its facilities and equipment from the premises of such Subscriber.

(vi) Company shall comply with such other customer service requirements as are set forth in regulations or other guidance of the Federal Communications Commission from time to time.

In the event the City receives complaints regarding the Company's compliance with one or more of the above-referenced standards in this Exhibit A, the City may request, and the Company shall provide, information and records kept in the Company's normal course of business documenting Company's compliance with the specific term(s) and provision(s) of this Exhibit A that is the subject of the complaint. Company shall make a good faith effort to maintain its information and records in a manner so that the City can easily verify Company's compliance with the requirements of this Exhibit A.

**EXHIBIT B**  
**Public, Educational and Governmental Access**

4.8 **Governmental Programming Channel Functionality.** Governmental Programming Channels shall be capable of transmitting the primary video stream, related audio, and accompanying program related material within the Governmental Programming Channel video stream. "Program related material" shall mean (i) closed captioning for the hearing impaired, (ii) one alternative language or secondary audio program feed, (iii) program ratings information, (iv) such other material as may be essential to or necessary for the delivery of distribution of the primary video stream in a digital form; (v) video description information; and (vi) any material the FCC specifically identifies as program related material that a cable operator retransmitting a broadcast television signal pursuant to FCC must-carry rules is required to retransmit as part of a broadcast television signal; provided that Company is technically capable of passing through any such program related material; and provided, further, that program related material shall not include any interactive element or transactional application that requires the functionality of a two-way cable or similar plant or otherwise suggests that a return path will be provided, including, without limitation, any feature that prompts a Customer to attempt to utilize "triggers" or other options that are enabled by a return path. All such related audio and other material shall be provided as part of the Governmental Programming Channel programming feed transmitted to the Company; Company shall not be required to insert such related audio and other material onto a Governmental Programming Channel.

4.9 **Governmental Programming Channels carried in High Definition.** At such time as Company no longer offers the Basic Service tier in an analog or digital format, or such earlier time as would be required under any other Company franchise agreements in the Omaha metropolitan area, the Franchising Authority shall have the option, upon one hundred twenty (120) days written notice to Company, to provide Governmental Programming Channel signals to Company in a high-definition (HD) format (e.g. 1080i (1920 x 1080 interlaced], or some other format) utilized by one (1) or more of the commercial broadcast television stations. Company shall, without cost to the Franchising Authority or Subscribers, provide, install, and maintain in good working order the equipment necessary for transmitting such signals to Subscribers.

4.10 **Programming Delivery.** The Franchising Authority shall ensure Governmental Programming Channels and signals are in compliance with applicable FCC technical standards so the signal quality can be processed in the Cable System and retransmitted to Subscribers. Company shall not discriminate against Governmental Programming Channels with respect to the functionality, signal quality, and features from those of the local broadcast Channels carried on the Cable System. With respect to signal quality, Company shall not be required to carry a Governmental Programming Channel in a higher quality format than that of the Channel signal delivered to Company, but Company shall distribute the Governmental Programming Channel signal without degradation. Company may transmit the Governmental Programming Channels to Customers in a format of its own choosing, subject to Section 4.9, above. Any and all costs associated with any modification or conversion of the Governmental Programming Channels or

signals after the Governmental Programming Channels/signals leave the Franchising Authority's designated playback facilities, or any designated playback center authorized by the Franchising Authority, to a format different than that delivered by the Franchising Authority shall be provided by Company at no cost to the Franchising Authority or its designees. Company shall not cause any programming to override Governmental Programming on any Governmental Programming Channel, except by oral or written permission from the Franchising Authority, with the exception of emergency alert signals. The Franchising Authority or its designee shall ensure that the quality of the Governmental Programming Channel programming (as it leaves the Franchising Authority's playback locations) is comparable with that of similarly formatted signals received by Company from commercial providers. In no event shall Company reduce the bit rate or quality of the Governmental Programming signals it receives from the Franchising Authority.

4.11 Navigation to Governmental Programming Channels. Company agrees that if it utilizes a visual interface under its control on its Cable System for all Channels, the Governmental Programming Channels shall be treated in a non-discriminatory fashion consistent with applicable law so that Subscribers will have ready access to Governmental Programming Channels. This shall not be construed to require Company to pay any third party fees that may result from this obligation or install or modify any standard equipment or software to accommodate the inclusion of Governmental Programming Channels on its programming guide.

4.12 Noncommercial Use of Governmental Programming. Governmental Programming Channels are for noncommercial programming to be promoted and administered by the Franchising Authority as allowed under applicable law. Permitted noncommercial uses of the Governmental Programming Channels shall include by way of example and not limitation: (1) the identification of financial supporters similar to what is provided on public broadcasting stations; or (2) the solicitation of financial support for the provision of Governmental Programming by the Franchising Authority or third party users for charitable, educational or governmental purposes; or (3) programming offered by accredited, non-profit, educational institutions which may, for example, offer telecourses over a Governmental Programming Channel.

4.13 Initial Dedicated Fiber Return Lines. Company shall ensure the design, construction and maintenance, throughout the term of this Agreement, all Governmental Programming upstream feeds, connections and distribution facilities between the Cable System headend and each location identified below as well as other return lines and associated equipment that are listed below to enable the distribution of Governmental Programming to Company's Subscribers without material degradation of signal quality. The Franchising Authority shall ensure Governmental Programming signals leaving the playback facilities are in compliance with applicable FCC technical standards. Company shall ensure the construction, repair, replacement and maintenance over the term of the Agreement of all necessary technical equipment, fiber and related infrastructure to provide high quality twenty-four (24) hours per day fiber return feeds for each Governmental Programming Channel from the following designated access sites to the Cable System headend:

(i) La Vista City Hall, 8116 Parkview Boulevard or an alternative site within the Franchise Area as designated by the Franchising Authority and meeting the serviceability standards set for in this Franchise, and

(ii) Any other sites designated by the Franchising Authority or pursuant to an interlocal

agreement to which the Franchising Authority is a party ("Initial Lines").

**4.14 Future Fiber Return Lines for Governmental Programming.** At such time that the Franchising Authority determines:

(i) that the Franchising Authority desires the capacity to allow Subscribers in the Franchise Area to receive Governmental Programming (video or character generated) which may originate from schools, facilities operated by the Franchising Authority, other government facilities or other designated facilities (other than the Initial Lines indicated in Section 4.13 above), or

(ii) that the Franchising Authority desires to establish or change a location from which Governmental Programming is originated, or

(iii) that the Franchising Authority desires to upgrade the connection to Company from an existing signal point of origination,

the Franchising Authority shall give Company written notice detailing the location of the new point of origination or the new capability sought by the Franchising Authority ("Modifications"). Company shall thereafter respond with a written cost estimate ("Estimate") of what is necessary to implement the Modifications within a reasonable period of time. Thereafter, the Franchising Authority shall have the option of either accepting the Estimate of Company and having the Modifications performed thereby or choosing to have the Modifications completed by a third party; provided, however, that if the Franchising Authority chooses a third party to perform such Modifications, said third party must agree to follow and be bound by the Company's standard protocols and procedures applicable to granting access to the Cable System for non-Company personnel and equipment.

**4.15 Governmental Programming Fee.** So long as this Agreement remains effective, Company shall provide a cash grant to the Franchising Authority in the total amount of twenty cents (\$.20) per Subscriber, per month ("Governmental Programming Fee") to be used in accordance with Applicable Law. Company shall make such payments quarterly, following the Effective Date of this Agreement for the preceding quarter ending March 31, June 30, September 30, and December 31, provided that Company shall have no obligations to commence payment of such cash grants until after an election described in Section 4.1 above is effective. Each payment of Governmental Programming Fees shall be due and payable no later than thirty (30) days following the end of each quarter. Company shall not be required to pay a greater per-subscriber Governmental Programming Fee than required by the franchise agreement with the Franchising Authority of any other provider of Cable Services in the Franchise Area. The Subscriber multiplier shall be calculated based on the number of Subscribers served by Company as of the first day of the calendar quarter for which the Governmental Programming Fee is made.

(i) The Governmental Programming Fees may be spent by the Franchising Authority on any Governmental Programming related expense as determined appropriate in Franchising Authority's sole discretion, subject to any limitations imposed by Applicable Law. The Franchising Authority need not expend the Governmental Programming Fees immediately but rather may place such funds in a designated account with principal and interest to be used solely for Governmental Programming purposes over the term of the Agreement as determined solely by the Franchising

Authority, subject to any limitations imposed by Applicable Law. The Franchising Authority shall not encumber the Governmental Programming Fees for any other purpose. For purposes of calculating the Governmental Programming Fee only, in the case of multiple office buildings or multiple dwelling units, the "Subscriber" shall mean each lessee, tenant or occupant; not the building owner or landlord.

(ii) The Governmental Programming Fee shall not be considered "Gross Revenues" and is not part of the Franchise Fee. The parties agree that the Governmental Programming Fee falls within one (1) or more of the exceptions in 47 U.S.C. § 542(g)(2)(C). Company agrees that it will not offset or reduce its payment of past, present or future Franchise Fees required as a result of its obligation to remit the Governmental Programming Fee.

(iii) Any Governmental Programming Fee amounts owing pursuant to this Agreement which remain unpaid more than twenty-five (25) days after the date the payment is due shall be delinquent and shall thereafter accrue interest at twelve percent (12%) per annum or the prime lending rate published by the Wall Street Journal on the day the payment was due plus two percent (2%), whichever is greater, subject to any limitation on the interest rate under applicable law.

#### **4.16 Governmental Programming Technical Quality.**

(i) Company shall maintain the Cable System, including the fiber return lines from the Governmental Programming origination points, in accordance with FCC technical Standards so that Governmental Programming is transported and processed by Company at the same level of technical quality and reliability as other commercial signals carried by Company. There shall be no significant deterioration in signal from the point of origination upstream to the point of reception downstream on the Cable System. All processing equipment used by Company for processing Governmental Programming signals will be of similar quality to the processing equipment used for other commercial Channels.

(ii) Within twenty-four (24) hours of a written request from Franchising Authority to the Company identifying a technical problem with a Governmental Programming Channel and requesting assistance, Company will provide technical assistance or diagnostic services to determine whether or not a problem with a Governmental Programming signal is the result of matters for which Company is responsible and if so, Company will take prompt corrective action. If the problem is caused by or the result of the Franchising Authority's equipment or action, the Company will advise the Franchising Authority of the required corrective action and, if Franchising Authority upon investigation agrees with the Company's assessment of the cause of the problem, Company may charge the Franchising Authority its standard rates for a commercial service call. If the problem persists and there is a dispute about the cause, then the parties shall meet with engineering personnel from the Company and the Franchising Authority in order to determine the course of action to remedy the problem.

**4.17 Change in Technology.** In the event any change is made in the Cable System, related equipment or facilities or signal delivery technology which requires the Franchising Authority to obtain new equipment in order to be compatible with such change for purposes of the Governmental Programming Channels, Company shall, at its own expense and free of charge to Franchising Authority or its designated entities, purchase such equipment as may be necessary to facilitate the cablecasting of the Governmental Programming Channels in accordance with the

requirements of the Agreement.

4.18 Relocation of Cable System Headend. In the event the Cable System headend is relocated, Company will be responsible for replacing or restoring the then-existing capability to send and receive Governmental Programming at all existing locations at Company's cost so that all the functions and capacity remain available, operate reliably and satisfy all applicable technical standards and related obligations of the Agreement free of charge to the Franchising Authority or its designated entities.

4.19 Interconnection of PEG Channels. After the Franchising Authority has launched a public, educational or government access channel under the terms of this Franchise, Company shall, in accordance with this subsection, interconnect the Governmental Programming Channels of the Cable System with any other contiguous cable system not owned or operated by Company or an affiliate, upon the directive of the Franchising Authority. Interconnection of Channels may be done by direct cable connection, microwave link, satellite or other appropriate methods. In the alternative, Company may provide a direct fiber feed to Governmental Programming origination facilities in order to provide any designated access provider with Governmental Programming origination capabilities. The Franchising Authority shall not direct interconnection except under circumstances where it can be accomplished without undue burden or excessive costs to Subscribers. Company shall not be required to interconnect with the other cable system operators unless the operator of such cable system is willing to do so and pays for its own cost of constructing and maintaining the interconnect up to the demarcation point.

Company shall only be required to interconnect Governmental Programming Channels with an overbuilder in the Franchise Area in the event that the Franchising Authority has launched a public, educational or government access channel and the Franchising Authority determines in its sole discretion that it would be economically burdensome to its Subscribers to construct and maintain return lines directly from the origination point(s) of the Governmental Programming Channel(s) versus interconnecting with the Company. In the event Company receives a directive from the Franchising Authority to interconnect with an overbuilder, it shall immediately initiate negotiations with the other affected cable system or Systems and shall report to the Franchising Authority the results of such negotiations no later than sixty (60) days after such initiation. If the parties cannot reach an agreement on the terms of the interconnect, including compensation and timing, the dispute shall be submitted to the Franchising Authority for determination and resolution. Additionally, Company shall only be required to interconnect with an overbuilder if the overbuilder is providing similar support for Governmental Programming as required pursuant to this Franchise.

**Exhibit C**  
**SECTION 7.1.2 FRANCHISE FEE PAYMENT WORKSHEET (GAAP)**

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

Fee Factor: 5%

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Authorized Officer

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Date