

CITY OF OMAHA – COX
COMMUNICATIONS
CABLE TELEVISION FRANCHISE
AGREEMENT, AS AMENDED THROUGH
MARCH 1, 2009.

THIS DOCUMENT IS AN UNOFFICIAL COMPILATION OF THE CITY OF OMAHA CABLE TELEVISION FRANCHISE AGREEMENT WITH COX COMMUNICATIONS, LLC. IN ADDITION, CONTRACT PROPOSALS SUBMITTED BY COX COMMUNICATIONS OR ITS PREDECESSOR AND THE PROVISIONS OF OMAHA MUNICIPAL CODE CHAPTER 19, ARTICLE XII, ARE INCORPORATED INTO THE AGREEMENT BUT ARE NOT INCLUDED IN THIS DOCUMENT.

THIS COMPILATION IS INTENDED FOR INFORMATION PURPOSES ONLY AND AN EFFORT HAS BEEN MADE TO ASSURE ITS ACCURACY. HOWEVER, THE DOCUMENTS MAINTAINED BY THE OMAHA CITY CLERK ARE THE OFFICIAL RECORD OF THIS AGREEMENT.

INDEX

Original 15-year contract; September 4, 1980

Addendum "A" re various issues; August 23, 1983

Amendment re rate regulation, franchise fee, service extension; September
11, 1984

Amendment renewing through September 3, 2010; October 22, 1991

Amendment requiring interconnection with other systems; April 5, 1994

Amendment granting performance extension through September 3, 2011;
July 15, 1997

Resolution granting consent to moving the access studio subject to stated
conditions; December 19, 2000

Amendment altering PEG access requirements; May 15, 2007

AGREEMENT BETWEEN

THE CITY OF OMAHA
and

COX CABLE OF OMAHA, INC.

TO CONSTRUCT AND OPERATE

- A CABLE TELEVISION SYSTEM IN THE CITY OF OMAHA

RECEIVED _____

Presented to Council:

JUL 22 1980 - Doc #2054

Presented as Exemptions
of the City Clerk's Office

Mary Calligan Cornette

City Clerk

RECEIVED _____

Presented to Council:

JUL 28 1980 Doc #2003 I
Lost the necessary
direction from chair Ored to
Aug. 19 1980

AUG 19 1980 - #2991 - From Chair on file

Mary Calligan Cornette

City Clerk

CABLE TV PROPOSALS
MARCH 31, 1980

TABLE OF CONTENTS

<u>SECTION</u>	<u>PROVISION</u>	<u>PAGE</u>
	Right of Franchisee-----	1
	Acceptance of Law-----	2
	Franchise Fee-----	3
	<u>Article I: General</u>	
1	Definitions-----	3
2	Duty to Provide Service-----	5
3	Service Area-----	6
4	Police Power-----	7
5	Compliance With Law-----	7
6	Payment of Fees-----	9
7	Cost of Franchising-----	9
8	Rate Regulation-----	9
9	Letter of Credit-----	10
10	Construction Bond-----	12
11	Liability and Insurance-----	13
12	Indemnification-----	14
	<u>Article II: Construction</u>	
1	System Construction-----	15
2	Request for Construction-----	16
3	Early Extension-----	16
4	Commencement of Construction-----	16
5	Supervision of Construction-----	18
6	Mandatory Extension-----	18
7	Continuity of Service-----	19
8	Maintenance of System-----	20
9	System Operation-----	20
	<u>Article III: Administration and Regulation</u>	
1	Rules and Regulation-----	22
2	Application Procedure-----	22
3	Performance Evaluation-----	24
4	Supervision of Franchise-----	26
5	Liquidated Damages-----	26
6	Forfeiture and Termination-----	27
7	Foreclosure-----	29
8	Receivership-----	29
9	<u>Article IV: Purchase by City</u>	
1	Right to Purchase-----	30
2	Franchise Violation-----	30
3	Replacement Value and Goodwill-----	30
4	Date of Valuation-----	31
5	Transfer to City-----	31
6	Arbitration of Value and Cost-----	31
	<u>Article V: Miscellaneous Provisions</u>	
1	Notices-----	33
2	Books and Records-----	34
3	Relocation-----	34
4	Municipal Use of Company Facilities-----	34
5	CATV Advisory Committee-----	35
6	Termination of Service-----	35
7	Petitions and Applications-----	35
8	Company Rules and Regulations-----	35
9	Lockout Devices-----	35
10	Transfer of Ownership-----	35
11	Renewal of System-----	37
12	Eminent Domain-----	38
13	Company has no Recourse-----	38
14	Failure to Enforce-----	39
15	Time of Essence-----	39
16	Equal Employment Opportunity Clause-----	40
17	Severability-----	41
18	Effectiveness of Agreement-----	42

A G R E E M E N T

THIS AGREEMENT, made and entered into this _____ day of _____, 198_, by and between the CITY OF OMAHA, a Municipal Corporation, hereinafter referred to as "City", and _____ Cox Cable of Omaha, Inc. _____, a _____ Nebraska corporation _____ presently doing business at 1523 Farnam Street, Omaha, Nebraska _____, hereinafter referred to as "Company".

WITNESS THAT:

WHEREAS, the City has, following reasonable notice, conducted a full and complete public hearing according all interested persons reasonable opportunity to be heard, which proceeding was concerned with, among other elements, the analysis and consideration of the technical ability, financial condition, legal qualifications and general character of various applicants for a franchise to provide a Cable Communications System, as otherwise defined herein, within the City; and,

WHEREAS, after due consideration, analysis and deliberation, the City has found sufficient the technical ability, financial condition and legal qualification and character of the Company; and,

WHEREAS, the City has found that the award of a franchise to the Company, pursuant to its application and according to the terms and conditions of this Agreement, to be in the best interest of the City and its residents.

NOW, THEREFORE, IT IS AGREED BY AND BETWEEN THE ABOVE-
STATED PARTIES AS FOLLOWS:

1. That the Company shall, for a period of fifteen (15) years to commence from and after the effective date of the grant ordinance, be accorded the non-exclusive right and privilege to

CABLE TV FRANCHISES
MARCH 31, 1980

erect, construct, operate and maintain in, upon, along, across, above, over and under the highways, sidewalks, easements, dedications and other public property now in existence and as may be created or established during its term, any poles, wires, cable, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation of a CATV system for the interception, sale, transmission and distribution of television programs and other audiovisual electrical signals, and the right to transmit the same within the City as it exists as of the franchise grant and as its corporate limits may from time to time be changed; SUBJECT, however, to the terms and conditions of this Agreement and as otherwise provided by law.

2. That the Company will not at any time during the term of this Agreement, or as extended, challenge or attempt to challenge in any claim or proceeding any condition or term of local law or of this Agreement or otherwise contend the same to be unreasonable, arbitrary or void or that the City 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 local law as it exists and shall be amended from time to time throughout the term of its franchise, pursuant to the authority of this Agreement, in its entirety.

3. The Company further agrees to pay to the City a fee of five (5%) percent of gross revenues, as defined in this Agreement, or the maximum amount approved by the F.C.C., if other than five (5%) percent. The fee is to be paid in the manner provided herein; PROVIDED that this fee shall not be construed to be in lieu of or to otherwise preclude the City from levying any lawful municipal tax, nor shall it be off-set by any tax or fee imposed by any other taxing agency. PROVIDED ALSO, that the Company agrees

Approved
By City: 3/30/80
(Signature)

CABLE TV PROPOSAL
MARCH 31, 1980

that it shall make application to the F.C.C. for any waiver or other requirement necessary to secure approval of a five (5%) percent franchise fee; PROVIDED FURTHER, that if Federal law or regulations are amended in any way which would allow a greater fee, the City may by resolution increase said fee to an amount not to exceed ten (10%) percent, upon six (6) months' notice to the Company.

4. In further consideration of the foregoing, it is covenanted and agreed that the following terms and conditions shall apply throughout the term of this Agreement:

ARTICLE I.

Section 1. DEFINITIONS. For the purpose of this Agreement, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

(a) "Basic Service" shall mean all subscriber services provided by the Company, including the delivery of broadcast signals, covered by the regular monthly charge paid by all subscribers, excluding optional services for which a separate charge is made.

(b) "Cable Communication System" or "CATV System", or "System" shall mean a system of antennas, cables, wires, lines, towers, waveguides, or other conductors, converters, equipment or facilities, designed and constructed for the purpose of producing, receiving, transmitting, amplifying and distributing, audio, video and other forms of electronic or electrical signals, located in the City. This definition shall not include any such system that serves or will serve o

CABLE TV PROPO.
MARCH 31, 1986

multiple unit dwellings under common ownership, control of management, and does not use City rights-of-way.

(c) "Class IV Channel" means a signaling path provided by a cable communications system to transmit signals of any type from a subscriber terminal to another point in the cable communications system.

(d) "City" is the City of Omaha, a Municipal Corporation, in the State of Nebraska.

(e) "Company" or "Grantee" is the grantee of rights under any ordinance awarding a franchise, its successor, transferee or assign.

(f) "Converter" means an electronic device, which converts signals to a frequency not susceptible to interference within the television receiver of a subscriber, and by an appropriate channel selector also permits a subscriber to view all signals included in the basic service delivered at designated converter dial locations.

(g) "Council" shall mean the governing body of the City of Omaha.

(h) "Dedication" shall be limited to those rights-of-way for the benefit of the public and controlled by City, the terms, conditions or limitations upon which are not inconsistent with the erection, construction or maintenance of a CATV system, its structures or equipment.

(i) "Easement", unless the context otherwise indicates, shall mean those rights-of-way owned by the City, the terms, conditions or limitations upon which are not inconsistent with the erection, construction or maintenance of a CATV system, its structures or equipment.

(j) "FCC" shall mean the Federal Communications Commission and any legally appointed, designated or elected agent or successor.

CABLE TV PROPOSALS
MARCH 31, 1980

*Amended
by Dec. 1980
(577)*

(k) "Gross Revenues" shall mean all revenue derived directly or indirectly by the Company, its affiliates, subsidiaries, parent, and any person in which the Company has a financial interest, from or in connection with the operation of a cable communication system pursuant to this Agreement. Provided, "gross revenues" shall include but not be limited to, basic subscriber service monthly fees, pay cable fees, installation and reconnection fees, leased channel fees, converter rentals, studio rental, production equipment and personnel fees, advertising revenues, and all revenues derived from any ancillary services provided as a result of the grant of a franchise. "Gross Revenues" shall not include any taxes or services furnished by the Company imposed directly upon any subscriber or user by the state, city or other governmental unit and collected by the Company on behalf of said government unit.

(l) "Highway" is a way or place of whatever nature, publicly maintained and open to the use of the public for purposes of vehicular travel. Highway shall include street or alley.

(m) "Installation" shall mean the connection of the system from feeder cable to subscribers' terminals.

(n) "Public Property" is any real property owned by the City other than a highway, sidewalk, easement or dedication.

(o) "Sidewalk" is that portion of a highway, other than the roadway, set apart by curbs, barriers, markings or other delineation for pedestrian travel, including parkways, not on private lands.

Section 2. OBLIGATION OF FRANCHISE. The Company shall in compliance with all applicable provisions of law and this Agreement provide to the City of Omaha each and every service required by law, including the Omaha Municipal Code, together with those services more specifically described and set out in the application and supplements to which this Agreement is appended,

previously filed by the Company with the City Clerk. To the extent the same is not inconsistent herewith, said application is incorporated herein by reference and made a part of this Agreement. (Exhibit "A"). In the event of a conflict between Exhibit "A" and the terms of this Agreement or applicable law, the provision which provides the greatest benefit to the City, in the opinion of the City Council, shall prevail.

Section 3. AREA TO BE SERVED. Each and all service described in Exhibit "A" shall be provided to every area within the corporate limits of the City as they presently exist, or may from time to time be altered. PROVIDED THAT, in the event an area is annexed, the Company shall negotiate an addendum to this Agreement within thirty (30) days following the effective date of annexation to provide for a reasonable time by which construction to provide all services shall be completed for annexed area. PROVIDED FURTHER, that nothing herein shall require the Company to provide service thereto, if the area does not meet the minimum qualification requirements established by ordinance for mandatory line extension, unless otherwise required by law or this Agreement. If a change in population occurs to mandate service to any area, the Company agrees to negotiate a similar addendum.

Section 4. POLICE POWER. The Company acknowledges that any right or privilege hereunder is subject to the power of the City to adopt or enforce general ordinances necessary to the safety and welfare of the public. It, therefore, specifically agrees and covenants to comply with all applicable existing general laws or any pertinent ordinance enacted in the future. Any conflict between the provisions of this Agreement and present laws or future lawful exercise of the City's police powers, shall be resolved in favor of the latter. In the event such exercise is not of general application in the City, or applies exclusively to the Company or CATV systems, or contains provisions which are

CABLE TV PROPOSALS
MARCH 31, 1980

inconsistent with this Agreement, such law shall prevail only if upon exercise, the City finds an emergency exists constituting a danger to health, safety, property or general welfare or such exercise is mandated by law.

Section 5. COMPLIANCE WITH STATE AND FEDERAL LAWS.

Notwithstanding any other provisions of this Agreement to the contrary, the Company shall at all times comply with all laws and regulations of the state and federal government or any administrative agencies thereof. PROVIDED, HOWEVER, if any such state or federal law or regulation shall require the Company to perform any service, or shall permit the Company to perform any service, or shall prohibit the Company from performing any service, or shall conflict with the terms of this Agreement or of any law or regulation of the City, then as soon as possible following knowledge thereof, the Company shall notify the City of the point of conflict believed to exist between such regulation or law and the laws or regulations of the City or this Agreement.

Should the Council determine that a material provision of this Agreement is affected by any subsequent action of the state or federal government, the Council shall have the right to modify any of the provisions herein to such reasonable extent as may be necessary to carry out the full intent and purpose of this Agreement.

Section 6. PAYMENT OF FRANCHISE FEE.

(a) The franchise fee shall be paid to the Finance Department of the City by Cashier's Check no later than thirty (30) days following the expiration of each quarter year ending on March 31st, June 30th, September 30th and December 31st. Each payment shall be accompanied by a detailed, complete and accurate statement of all gross revenues within the City during the period for which payment is made. Each statement shall be verified as accurate by the proper financial officer of the Company.

CABLE TV PROPOSALS
MARCH 31, 1980

(b) Within one hundred twenty (120) days following the conclusion of each fiscal year of the Company, it shall file an annual report prepared and audited by an independent Certified Public Accountant. The report shall reflect the yearly total gross revenues, payments to the City, and all relevant financial information.

(c) In the event the franchise of the Company should be terminated or forfeited prior to the expiration of its term, the Company shall immediately submit to the City a financial statement prepared as would otherwise be required, showing gross revenue receipts for the time which has elapsed since the last period for which payment was made. Payment for said period shall be due to the City within thirty (30) days following the termination. X

(d) No acceptance by the City of any payment shall be construed as a release or an accord or satisfaction of any claim the City may have for further or additional sums payable hereunder or for any performance or obligation of the Company. The City shall have a right to inspect any records of the Company, and the right to audit and recompute any amounts payable thereto; provided that such audit shall commence within forty-eight (48) months following the close of each fiscal year of the Company. In the event amounts are due, the Company shall pay said amount within thirty (30) days following written notice. Provided that the Company may pay said amount under protest with the right to recompute the same.

(e) Interest shall be charged daily from the date due for any payment or recomputed amount, cost or penalty not made on or before the applicable date at the annual rate of twelve (12%) percent.

Section 7. COSTS.

(a) The Company shall pay all costs incurred by the City incidental to the grant of any rights hereunder including, but not limited to, the costs incurred by the City in its study and preparation of proposed documents; evaluation of all applications, and examination of the qualifications of each applicant. Provided that such costs shall be first allocated to the aggregate of all application fees received. In no event shall the Company's liability for such costs be in excess of \$50,000.00, in addition to its application fee. Payment of those costs shall be made within thirty (30) days following written notice from the City to the Company.

Section 8. RATES. The Company agrees that all rates proposed in Exhibit "A", for those services for which the City may lawfully regulate rates, shall remain in effect for a period of not less than three (3) years, commencing from and after the date service is first furnished to any subscriber, unless otherwise provided herein or if the City increases the franchise to more than 5% of gross revenues. Such action by the City shall permit the Company, in its discretion, to petition for a rate increase at any time during the term of the franchise.

(a) It is agreed and accepted by the Company that all rates for any service which the City may by law regulate shall be fixed and regulated by the City in the manner established by ordinance. Provided that the City reserves the right to similarly fix and regulate rates for any service for which, during the term hereof, the City should acquire the legal authority to regulate any rate. The Company agrees to abide by the final decision of the Council on any petition for any rate increase, or any other action taken by the Council with respect to rates, including denials or reductions.

(b) The Company agrees that it will not increase any proposed initial rate for any service, including pay cable services, included within Exhibit "A", over which at the time of the effective date of this Agreement the City has no authority to regulate

CABLE TV PROPOSALS
MARCH 31, 1980

the corresponding rate, for a period of not less than 36 months, commencing from and after the date service is first furnished to any subscriber. The Company further agrees that no rate for such services will be increased until after a public hearing at which the Company shall inform all interested persons the reasons for the proposed increase. At least forty-five (45) days' notice of the public hearing shall be provided to all subscribers and customers, advising of the date, time, location and the proposed rate for each service affected.

(c) All financial reports prepared by Company required by this Agreement or by law shall conform to generally accepted accounting principles applied on a consistent and fair basis.

(d) The following accounting transactions between the Company, its parent corporation, if any, and third party contractors of the system shall be fully disclosed to the City and subject to its review and concurrence: all accounting assumptions and treatment, including, but not limited to, rates of depreciation, capitalization and exposing of costs, determination of capital structure, and amortization of indebtedness.

Section 9. LETTER OF CREDIT.

(a) Within ten (10) days after the execution of this Agreement, the Company shall deposit with the City a letter of credit from a financial institution in the amount of \$50,000.00. The form and content of such letter of credit shall be approved by the City Attorney. The letter of credit shall be used to insure the faithful performance by the Company of all provisions of this Agreement, the provisions of applicable law and compliance with all orders, permits and directions of any agency, commission, board, department, division or office of the City having jurisdiction over its acts or defaults herein, and the payment by the Company of any claims, liens and taxes due the City which arise by reason of the construction, operation or maintenance of the system.

*Approved
by City Attorney
3/11/80*

**CABLE TV PROPOSALS
MARCH 31, 1980**

(b) The letter of credit shall be maintained at \$50,000.00 during the entire term of the Company's franchise, even if amounts have to be withdrawn pursuant to subdivision (a) or (c) of this section, and shall remain in effect for sixty (60) days after the conclusion or termination of this Agreement.

(c) If the Company fails to pay to the City any compensation within the time prescribed herein; or fails, after ten (10) days' notice to pay to the City any taxes due and unpaid; or fails to repay the City within ten (10) days, any damages, costs or expenses which the City is compelled to pay by reason of any act or default of the Company in connection with this Agreement or law; or fails after three (3) days' notice of such failure by the City to comply with any provisions of this Agreement or law which the City reasonably determines can be remedied by demand on the letter of credit, the City may immediately request payment from the letter of credit of the amount thereof, together with interest and any liquidated damages. Upon request for payment, the City shall notify the Company of the amount and date hereof.

(d) Any right hereunder shall not be deemed exclusive but in addition to all other rights of the City, whether reserved by this Agreement or authorized by law, and no action, proceeding or exercise of a right with respect to such letter of credit shall adversely affect any other right the City may have.

(e) The letter of credit shall contain the following endorsement:

"It is hereby understood and agreed that this letter of credit may not be cancelled by the surety nor the intention not to renew be stated by the surety until sixty (60) days after receipt by the City, by registered mail, a written notice of such intention to cancel or not to renew."

CABLE TV PROPOSALS
MARCH 31, 1980

Section 10. CONSTRUCTION BOND.

(a) Within ten (10) days after the execution of this Agreement, the Company shall obtain and maintain at its cost and expense, and file with the City Clerk, a corporate surety bond in a firm authorized to do business in the State of Nebraska and found acceptable by the City Attorney. The amount of the bond shall be One Million (\$1,000,000.00) Dollars to guarantee the timely construction as well as full activation of the CATV system.

The bond shall provide, but not be limited to, the following condition: there shall be recoverable by the City, jointly and severally from the principal and surety, any and all damages, loss or costs suffered by the City resulting from the failure of the Company to satisfactorily complete and fully activate the CATV system throughout the franchise area in accordance with and pursuant to Exhibit "A".

(b) Any extension to the prescribed time limit must be authorized by the Council. Such extension shall be authorized only when the Council finds that such extension is necessary and appropriate due to causes beyond the control of the company.

(c) The construction bond shall be terminated only after the Council finds that the Company has satisfactorily completed initial construction and activation of the CATV system pursuant to the terms and conditions of law and of this Agreement.

(d) Any right hereunder shall not be deemed exclusive but in addition to all other rights of the City, whether reserved by this Agreement or authorized by law, and no action, proceeding or exercise of a right with respect to such construction bond shall affect any other rights the City may have.

(e) The construction bond shall contain the following endorsement:

"It is hereby understood and agreed that this bond may not be cancelled by the surety nor

the intention not to renew be stated by the surety until sixty (60) days after receipt by the City, by registered mail, a written notice of such intent to cancel or not to renew."

Section 11. LIABILITY AND INSURANCE.

(a) The Company agrees to indemnify, keep and save the City, its officers, boards, commissions, agents and employees free and harmless from liability on account of any injury, death or damage to persons or property arising out of the construction, maintenance, repair and operation of its cable television system. In the event that suit is brought against the City either independently or jointly with the Company, on account thereof, the Company upon notice by the City shall defend the City in any such suit at the cost of the Company. In the event final judgment is obtained against the City either independently or jointly with the Company, the Company shall indemnify the City and pay such judgment with all costs and hold the City harmless therefrom.

(b) The Company specifically agrees that it will pay all expenses incurred by the City in defending itself with regard to all damages and penalties mentioned in subsection (a) above. These expenses shall include all out-of-pocket expenses, such as attorney fees, and shall also include the reasonable value of any services rendered by the City Attorney or his assistants, or any other employees of the City or its agents.

(c) The Company agrees that it will procure and maintain throughout the term of the franchise a general comprehensive public liability insurance policy insuring the City and the Company with regard to all damages mentioned in subsection (a) hereof in the minimum amount of:

- (1) \$500,000 for property damage to any one person;
- (2) \$2,000,000 for property damage in any one accident;
- (3) \$1,000,000 for personal injury to any one person; and
- (4) \$2,000,000 for personal injury in any one accident.

(d) The insurance policy obtained by the Company in compliance with this section shall be provided to the City within ten (10) days after the effective date of the franchise grant and shall be approved by the City Attorney. The insurance policy, along with written evidence of payment of required premiums, shall be filed and maintained with the Finance Director of the City during the term of the franchise. It is agreed that the amounts may be changed from time to time to reflect changing liability limits. The Company shall immediately advise the City Attorney of any litigation that may develop that would affect this insurance.

(e) Neither the provisions of this section nor any damages recovered by the City thereunder, shall be construed to or limit the liability of the Company under any franchise issued hereunder or for damages.

(f) All insurance policies maintained pursuant to this Agreement shall contain the following endorsement:

"It is hereby understood and agreed that this insurance policy may not be cancelled by the surety nor the intention not to renew be stated by the surety until sixty (60) days after receipt by the City, by registered mail, a written notice of such intention to cancel or not to renew."

Section 12. INDEMNIFICATION. Company shall, at its sole cost and expense, fully indemnify, defend and hold harmless the City, its officers, boards, commissions and employees against any and all claims, suits, actions, liability and judgments for damages (including, but not limited to, expenses for reasonable legal fees and disbursements and liabilities assumed by the City in connection therewith).

(a) To persons or property, in any way arising out of or through any act or omission of the Company, its servants, agents or employees or for which the Company's negligence may contribute.

CABLE TV PROPOSALS
MARCH 31, 1989

(b) Arising out of any claim for invasion of the right of privacy, for defamation of any person, firm or corporation, or the violation or infringement of any copyright, trademark, trade name, service mark or patent, or of any other right of any person, firm or corporation (excluding claims arising out of or relating to City programming);

(b) Arising out of the Company's failure to comply with the provisions of any federal, state or local statute, ordinance or regulation applicable to Company in its business hereunder; and,

(d) The foregoing indemnity is conditioned upon the following:

The City shall give Company prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this section. Nothing herein shall be deemed to prevent the City from cooperating with Company and participating in the defense of any litigation by its own counsel at its sole cost and expense. No recovery by the City of any sum by reason of the Letter of Credit required in Article I, Section 16 hereof, shall be any limitation upon the liability of the Company to the City under the terms of this section, except that any sum so received by the City shall be deducted from any recovery which the City might have against the Company under the terms of this section.

ARTICLE II. CATV SYSTEM CONSTRUCTION

Section 1.

(a) The Company agrees to construct, install, operate and maintain a system capable of providing each service described in Exhibit "A" to all persons within the franchise area in a manner consistent with standards, governmental requirements, F.C.C. technical standards,

and detailed standards submitted by Company in Exhibit "A", as approved by the City, pursuant to the construction plan submitted in Exhibit "A". Construction shall be completed within three (3) years from the grant of the Company's franchise, provided that within eighteen (18) months 43 (%) percent of the proposed system shall be completed in accordance with Exhibit "A". Construction plan shall be open to public inspection during normal business hours at the main local office of the Company. The plan shall be kept current in all respects to indicate progression of service and approximate tentative scheduling for unserved areas.

Section 2.

(a) The Company shall maintain for public inspection a record for at least three (3) years containing all requests for service received by it.

(b) The Company shall furnish the City with progress reports indicating in detail the area of construction of the system. The reports shall be furnished at three (3) month intervals, the first of which shall be due nine (9) months from the execution of this Agreement.

Section 3. EARLY CONSTRUCTION AND EXTENSION. Nothing in this Article shall prevent the Company from constructing the system earlier than planned. However, any delay in the system construction beyond the times specified in the plan report timetable shall require application to and consent by the Council. The City shall not withhold consent when Company has shown good cause for the delay, but City may attach reasonable conditions to ensure performance. Good cause shall be that defined in 19-1 et seq. of the Omaha Municipal Code.

Section 4. COMMENCEMENT OF CONSTRUCTION.

(a) Construction in accordance with the plan submitted by Company shall commence as soon after the grant and acceptance

Approved
By DA #380
(5/2)

Approved
By DA #380
(5/2)

of the franchise as is reasonably possible. The City acknowledges that commencement of construction depends in large part upon Company's retention of cable television construction crews. Company shall seek to retain and contract with such construction crews with all due diligence. Failure to proceed expeditiously shall be grounds for revocation of this franchise. Failure to proceed expeditiously shall be presumed in the event construction is not commenced within nine (9) months from the effective date of this Agreement.

(b) Within ninety (90) days following the effective date of this Agreement, the Company shall apply for all necessary governmental permits, licenses, certificates and authorizations.

(c) Within sixty (60) days following the effective date of this Agreement, the Company shall provide the City with the following information:

- (1) The areas within the City which the applicant will or is required to bury cable; and,
- (2) The areas within the City for which the applicant will have to obtain easements from property owners in order to furnish service to the area.

(d) The Company shall enter into contracts with any public utility companies or any other owner or lessee of any poles located within or without the City to whatever extent such contract or contracts are required by law, or are of advantage to the Company for use of poles and posts necessary for proper installation of the system unless proscribed by law, obtain right-of-way permits from appropriate state, county and federal officials necessary to cross highways or roads under their respective jurisdictions to supply main trunk lines from the Company's receiving antennas, obtain permission from Federal Aviation Administration to erect and maintain antennas suitable to the needs of the system and its subscribers and obtain whatever other permits a city, county, state or federal agency may require.

**CABLE TV PROPOSALS
MARCH 31, 1980**

Section 5. SUPERVISION BY THE CITY.

(a) The Director of Public Works, or a person appointed by the Council may, from time to time, issue reasonable rules and regulations concerning the construction, operation and maintenance of the system as are consistent with the law and the provisions of this Agreement.

(b) In the event the Council determines, giving due regard to technological and economical limitation, that any part or all of the system should be improved or upgraded (including without limitation the increasing of channel capacity, and the furnishing of improved converters), it may by ordinance or by addendum to this Agreement, order such reasonable improvements or upgrading of the system to be effected by the Company within a reasonable time thereafter. Such requirement shall be considered in any petition for a rate increase, provided that such action shall permit the Company in its discretion to petition for a rate increase at any time during the term of its franchise.

Section 6. ADDITIONAL MANDATORY EXTENSION. The Company agrees to extend the system into any areas not specifically treated in the construction plan, if the terms of any of the following conditions are met:

(a) Mandatory Extension Rule. Company shall extend the system to any area including areas annexed by the City not designated for extension in construction plan when potential subscribers can be served by extending dwelling units equivalent to a density of 20/30 homes per street mile contiguous to the activated system. *Pay first \$1,000*

(b) Early Extension. In areas not meeting the requirements for mandatory extension of service, Company shall provide, upon the request of five (5) or more potential subscribers desiring service, an estimate of the costs required to extend service to said subscribers. Company shall then extend service upon request of said potential subscribers according to the rate schedule.

*Amended
1991 renewal*

*Amended
1991
1992*

**CABLE TV PROPOSALS
MARCH 31, 1980**

Company may require advance payment or assurance of payment satisfactory to Company. The amount paid by subscribers for early extension shall be nonrefundable, and in the event the area subsequently reaches the density required for mandatory extension, such payments shall be treated as consideration for early extension.

(c) In addition to the foregoing, the Company shall provide each and all service to all new housing projects with the franchise area with a projected housing density of 30 per street mile. Service shall be provided within 3 months after the subdivision is 50 (50%) percent occupied.

(d) Agreements. The Company may enter into any Agreement with developers, property owners, or residents to serve areas not required to be served, provided that such Agreement shall be first approved by the City.

Section 7. MANDATORY CONTINUITY OF SERVICE.

(a) It shall be the right of all subscribers to continue receiving service insofar as their financial and other obligations to the Company are honored. In the event that the Company elects to overbuild, rebuild, modify, or sell the system, or the City gives notice of intent to terminate or fails to renew its franchise, the Company shall act so as to insure that all subscribers receive continuous, uninterrupted service regardless of the circumstances.

In the event of a change of franchise, or in the event a new operator acquires the system, the Company shall cooperate with the City, new franchisee or operator in maintaining continuity of service to all subscribers. During such period, Company shall be entitled to the net revenues, if any, for any period during which it operates the system.

(b) In the event Company fails to operate the system for seven (7) consecutive days without prior approval of the City or without just cause, the City may, at its option, operate the system 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 City for all reasonable costs or damages in excess of revenues from the system received by the City that are the result of the Company's failure to perform. The City shall also be entitled to its payment of the franchise fee during that period.

Section 8. MAINTENANCE OF SYSTEM.

(a) The Company shall erect and maintain all parts of the system in good condition throughout the entire franchise period in accordance with this Agreement and as provided by law.

(b) The Company shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during period of minimum system use. Complaint procedures shall be established in the manner provided by municipal ordinance.

(c) The Company shall annually furnish the City and the Advisory Committee with an operation report showing the type and number of subscribers of each type, subscribers gained or lost and a summary of all complaints, and their resolve, received from subscribers or customers concerning the operation of the system.

(d) The Company agrees to become and remain, during the term of its franchise, a member in good standing of the Metropolitan Utilities One Call Committee, to cooperate with all other members thereof and to abide by all rules, procedures and by-laws.

(e) Company shall provide the City, upon request, with a written report of the results of Company's annual proof of performance tests conducted pursuant to F.C.C. standards and requirements.

Section 9. SYSTEM OPERATION. In addition to all other provisions of law and this Agreement, it is agreed this system shall be installed and maintained in accordance with the highest

**CABLE TV PROPOSALS
MARCH 31, 1980**

accepted standards of the industry to the end that the subscriber may receive the highest and most desirable form of service.

(a) In determining satisfactory compliance with the provisions of this section, the following, among other things, may be considered:

- (1) That the system as installed is capable of transmitting and passing the standard color television signals without the introduction of material degradation on color fidelity and intelligence;
- (2) That the system is designed and rated for 24-hour-a-day continuous operation;
- (3) That the system is capable of and will produce a picture upon any subscriber's television screen in black and white or color (provided the subscriber's television set is capable of producing a colored picture) that is, undistorted and free from ghost images and accompanied by proper sound, assuming typical standard production television sets in good repair, and that the television transmission is satisfactory, in any event, the picture produced shall be as good as the state of the art allows;
- (4) That the system transmits or distributes signals of adequate strength to produce good pictures with good sound at all television receivers of all subscribers without causing cross-modulation in the cables or interfering with other electrical or electronic systems or the reception of other television or radio receivers in the area not connected to the system.
- (5) The Company shall furnish to its subscribers the signals received from local broadcast stations at the time of broadcast by said station. No part of said local stations' signals shall be altered, deleted or modified in any respect by the Company.
- (6) The Company shall make available at cost to all subscribers requesting them such switching devices as are necessary to permit a subscriber to use his own antenna. Such devices shall provide the best available signal quality consistent with the reasonable technical state of the art and such devices shall not result in unreasonable interference to signals received using a subscriber owned antenna. The Company shall inform each new subscriber prior to the time a cable connection is made (1) that such a device is available and (2) the cost to the subscriber if installing it. No subscriber owned antennas shall be removed by the Company, except upon the written request of the owner.

ARTICLE III. ADMINISTRATION AND REGULATION.

Section 1. RULES AND REGULATIONS.

(a) In addition to the inherent powers of the City to regulate and control a franchise, and those powers expressly reserved by the City, or agreed to and provided for herein, the right and power is hereby reserved by the City to promulgate such additional regulations as it shall find necessary in the exercise of its lawful powers and in furtherance of the terms and conditions of this Agreement.

(b) The City may also adopt such regulations at the request of Company upon application.

Section 2. APPLICATION PROCEDURE. Except as otherwise specifically provided for herein, all applications by the Company such as for changes in services, construction schedules, transfer of ownership, proposed changes in regulations or ordinance, etc., and as otherwise authorized by or made pursuant to this Agreement or law, shall be made and processed according to the following procedure:

(a) Applications shall be in a form containing sufficient facts and information acceptable to the City.

(b) An application may be rejected for inadequacy by City if it contains an inadequate description of what is being applied for, is not in an acceptable form, or contains insufficient facts and information for adequate consideration.

(c) A rejection of an application for inadequacy shall be in writing by notice which shall state the deficiencies. The notice shall not be construed to limit further and different deficiencies on subsequent applications.

(d) Upon acceptance, the City shall review the application regarding the necessity of further staff study and reporting. The staff may submit the application to the Council

CABLE TV PRO.
MARCH 31, 1980

if it deems it adequate and complete and in need of no further staff study or report. The City shall give notice to Company within thirty (30) days of acceptance if it will study the application prior to submission to the Council. The study shall be completed within forty-five (45) days, unless such period is extended for up to an additional forty-five (45) days by motion of the Council or a longer period of time by agreement with Company.

At the conclusion of the study, the City may submit the application study and other information, documents and exhibits to the Council for consideration.

At the expiration of the study period, if the matter has not been placed upon the Council agenda, Company may request the City Clerk to place the application upon the Council agenda for the next regular meeting.

(e) During the study period, Company shall fully cooperate with City in providing information and documents which are related to and reasonably necessary in the proper evaluation of the application. Failure of Company to so cooperate or Company's unreasonable delay in providing information and documents shall be grounds for a reasonable extension by the Council of the study period or, if either the lack of cooperation or the delay substantially impairs the study, the Council may summarily deny the application.

(f) Upon submission to the Council, it shall review the application and any studies, information and documents which accompany it. Except the applications for which a public hearing is otherwise required, the Council shall approve or deny the applications based on the record within thirty (30) days. If the Council desires a public hearing, or if one is required, the Council shall set a public hearing within thirty (30) days. Public notice of hearing shall be given.

**CABLE TV PROPOSALS
MARCH 31, 1980**

(g) At a public hearing pursuant to this application process, the Council shall hear reports from staff, consultants, and the public. The Council shall provide a reasonable but not unlimited opportunity for rebuttal. The Council may impose reasonable time limitations on verbal presentations which may be selectively waived to facilitate adequate evaluation of the application.

(h) If, at the hearing, the Council determines that additional information or documents are necessary to adequately evaluate the application, it may continue the hearing from time to time pending augmentation of the record. A continuance shall not exceed fifteen (15) days at a time.

(i) At the close of the hearing, the Council shall, within thirty (30) days, approve, deny or modify the application. Such action shall be final. Notice of denial and the grounds therefor may be in writing if requested. Reasonable conditions in furtherance of the purpose and intent of the franchise may be attached by the Council to an approval or modification and may be acted upon by Company upon acceptance in writing by Company. Action shall be final.

(j) Any time limit may be waived by consent of both the Council and Company.

Section 3. PERFORMANCE EVALUATION SESSIONS.

(a) The City and the Company shall hold scheduled performance evaluation sessions within thirty (30) days of the fifth and tenth anniversary dates of the Company's award of the franchise and as required by Federal and State law. All such evaluation sessions shall be open to the public..

(b) Special evaluation sessions may be held at any time during the term of the franchise at the request of the City or the Company.

CABLE TV PROPOSALS
MARCH 31, 1980

(c) All evaluation sessions shall be open to the public and announced in a newspaper of general circulation in accordance with legal notice. Company shall notify its subscribers of all evaluation sessions by announcement on at least one (1) channel of its system between the hours of 7:00 p.m. and 9:00 p.m., for five (5) consecutive days preceding each session.

(d) Topics which may be discussed at any scheduled or special evaluation session may include, but not be limited to, service rate structures, franchise fee, penalties, free or discounted services, application of new technologies, system performance, services provided, programming offered, customer complaints, privacy, amendments to this Agreement or Municipal Ordinance, judicial and F.C.C. ruling, line extension policies, and Company or City rules.

(e) Members of the general public may add topics or request such a session either by working through the negotiating parties or by presenting a petition. If such a petition bears the valid signatures of fifty (50) or more residents of the City of Omaha, the proposed topic or topics shall be added to the list of topics to be discussed at the evaluation session.

(f) During a review and evaluation by City, Company shall fully cooperate with City and shall provide such information and documents as City may need to reasonably perform the review.

(g) If at anytime during its review, City determines that reasonable evidence exists of inadequate CATV system performance, it may require Company to perform tests and analyses directed toward such testing and to prepare results and a report, if requested, within thirty (30) days after notice. Such report shall include the following information:

- (1) The nature of the complaint or problem which precipitated the special tests;

- (2) What system component was tested;
- (3) The equipment used and procedures employed in testing;
- (4) The method, if any, in which such complaint or problem was resolved;
- (5) Any other information pertinent to said tests and analysis which may be required.

City may require that tests be supervised at Company's expense by a professional engineer, not on the permanent staff of the Company. The engineer should sign all records of special tests and forward to the City such records with a report interpreting the results of the tests and recommending actions to be taken.

(h) The City's right under Article III, Section 3, shall be limited to requiring tests, analyses, and reports covering specific subjects and characteristics based on said complaints or other evidence when and under such circumstances as the City has reasonable grounds to believe that the complaints or other evidence require that tests be performed to protect the public against substandard cable service or services not in compliance with this Agreement or law.

Section 4. SUPERVISION OF THE FRANCHISE.

(a) The Council may appoint a staff person who shall be responsible for the continued administration of the Company's franchise. Notice of such appointment shall be conveyed to the Company.

Section 5. LIQUIDATED DAMAGES.

(a) For the violation of any of the following provisions of this franchise, liquidated damages shall be chargeable to the letter of credit as follows:

(1) For failure to submit plans indicating expected dates of installation of various parts of the cable system - \$100 per day.

(2) For failure to commence operations in accordance with the construction plan - \$200 per day.

(3) For failure to complete construction and installation of the system - \$500 per day.

(4) For failure to provide data and reports as requested by the City and as required herein or by ordinance - \$50 per day.

(5) For failure to restore the letter as required within thirty (30) days, the entire letter of credit remaining, if any, shall be forfeited.

(6) Forty-five (45) days following adoption of a resolution of the Council determining a failure of Company to comply with construction, operational or maintenance standards, Company shall pay to City One Hundred (\$100) Dollars per day for each day, or part thereof, that such noncompliance continues.

(b) The letter of credit deposited and the construction bond shall become the property of the City in the event that its franchise is cancelled by reason of the default of the Company. The Company, however, shall be entitled to the return of the letter of credit, or portion thereof, as remains on deposit with the Director of Finance at the expiration of the term of this Agreement, provided that there is then no outstanding default on the part of the Company.

(c) Damages and costs shall be paid in the manner provided by Article I, Section 6.

Section 6. FORFEITURE AND TERMINATION.

(a) In addition to all other rights and powers retained by the City under this Agreement or authorized by law, the City reserves the right to forfeit and terminate the franchise and all rights and privileges of the Company hereunder in the event of a substantial breach of its terms and conditions. A substantial breach of Company shall include, but shall not be limited to, the following:

- (1) Violation of any material provision of the franchise or any material rule, order, regulation or determination of the City made pursuant to the franchise;
- (2) Attempt to dispose of any of the facilities or property of its CATV system to prevent the City from purchasing it, as provided for herein;
- (3) Attempt to evade any material provision of the franchise or practice any fraud or deceit upon the City or its subscribers or customers;
- (4) Failure to begin or complete system construction or system extension as provided under the franchise as per Exhibit "A";
- (5) Failure to provide the types of services promised herein;
- (6) Failure to restore service after ninety-six (96) consecutive hours of interrupted service, except when approval of such interruption is obtained from the City; or
- (7) Material misrepresentation of act in the application for or negotiation of the franchise.

(b) The foregoing shall not constitute a major breach if the violation occurs but it is without fault of the Company or occurs as a result of circumstances beyond its control. Company shall not be excused by mere economic hardship nor by misfeasance or malfeasance of its directors, officers or employees.

(c) The City may make a written demand that the Company comply with any such provision, rule, order, or determination under or pursuant to this franchise. If the violation by the Company continues for a period of thirty (30) days following such written demand without written proof that the corrective action has been taken or is being actively and expeditiously pursued, the City may place the issue of termination of the franchise before the Council. The City shall cause to be served upon Company, at least twenty (20) days prior to the date of such Council meeting, a written notice

CABLE TV PROPOSALS
MARCH 31, 1980

of intent to request such termination and the time and place of the meeting. Public notice shall be given of the meeting and issue which the Council is to consider.

(d) The Council shall hear and consider the issue and shall hear any person interested therein, and shall determine in its discretion, whether or not any violation by the Company has occurred.

(e) If the Council shall determine the violation by the Company was the fault of Company and within its control, the Council may, by resolution, declare that the franchise of the Company shall be forfeited and terminated, unless there is compliance within such period as the Council may fix, such period not to be less than ninety (90) days, provided no opportunity for compliance need be granted for fraud or misrepresentation.

(f) The issue of forfeiture and termination shall automatically be placed upon the Council agenda at the expiration of the time set by it for compliance. The Council then may terminate the franchise forthwith upon finding that Company has failed to achieve compliance or may further extend the period, in its discretion.

Section 7. FORECLOSURE. Upon the foreclosure or other judicial sale of all or a substantial part of the CATV system, or upon the termination of any lease covering all or a substantial part of the CATV system, the Company shall notify the City of such fact, and such notification shall be treated as a notification that a change in control of the Company has taken place, and the provisions of this Agreement governing the consent of the Council to such change in control of the Company shall apply.

Section 8. RECEIVORSHIP. The Council shall have the right to cancel this Agreement One Hundred Twenty (120) days

**CABLE TV PROPOSALS
MARCH 31, 1977**

after the appointment of a receiver, or trustee, to take over and conduct the business of the Company, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:

(a) Within one hundred twenty (120) days after this election or appointment, such receiver or trustee shall have fully complied with all the provisions of this Agreement and remedied all defaults thereunder; and,

(b) Such receiver or trustee, within said one hundred twenty (120) days, shall have executed an agreement, duly approved by the court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Agreement and all applicable provisions of law.

ARTICLE IV. PURCHASE OF CATV SYSTEM BY CITY.

Section. 1. RIGHTS TO PURCHASE. In the event the Company forfeits and City terminates this Agreement pursuant to provisions hereof or law, or at the normal expiration of the franchise term, City shall have the right, directly or as an intermediary, to purchase the CATV system.

Section 2. FRANCHISE VALUATION.

(a) The value of the franchise shall be the aggregate of the replacement value of tangible assets and the going concern value of the franchised CATV system.

(b) The Company shall furnish annually any report required of the Company to be furnished to the State in compliance with Section 77-801, et seq., R. R. S., 1943.

Section 3. REPLACEMENT VALUE AND GOODWILL.

(a) "Replacement value" shall be determined by the unit-in-place method.

**CABLE TV PROPOSALS
MARCH 31, 1980**

(b) The "going concern value" shall mean the benefits that attach to the business as a result of its location in the City, Company's reputation among franchise subscribers or potential subscribers for dependability and quality of service, and any other circumstances resulting in probable retention of old subscribers or acquisition of new subscribers; except no value shall be assigned to either the franchise itself or any right, privilege or expectancy arising to Company out of the right to transact business under the franchise, and particularly no value shall be allowed for any increase in value arising out of any expectation of CATV system revenues beyond the forfeiture and termination date or expiration date, whichever is sooner.

Section 4. DATE OF VALUATION. The date of valuation shall be no earlier than the day following the date of expiration of termination and no later than the date City makes a fair and reasonable offer for the system or the date of transfer of ownership, whichever occurs first.

Section 5. TRANSFER TO CITY. Upon exercise of this option and the payment of the above sum by the City and its service of official notice of such action upon Company, the Company shall immediately transfer to the City possession and title to all facilities and property, real and personal, of the CATV system, free from any and all liens and encumbrances not agreed to be assumed by the City in lieu of some portion of the purchase price set forth above; and the Company shall execute such warranty deeds or other instruments of conveyance to City as shall be necessary for this purpose.

Section 6. ARBITRATION OF VALUE AND COSTS.

(a) In the event City and Company cannot agree upon the value of CATV system, either may give notice of a demand to the other for arbitration.

(b) Arbitration shall commence and proceed according to law except as follows:

(1) The parties shall each, within fifteen (15) days, appoint an arbitrator who is experienced and knowledgeable in the valuation of business property. Arbitrators shall each agree upon the selection of a third arbitrator, similarly qualified, within fifteen (15) days.

(2) Within thirty (30) days after appointment of all arbitrators and upon ten (10) days' written notice to parties, the board of arbitrators shall commence a hearing on the issue of valuation.

(3) The hearing shall be recorded and transcribed at the request of either party. All hearing proceedings, debate and deliberations shall be open to the public and at such times and places as contained in the notice or as thereafter publicly stated in the order to adjourn, except as otherwise authorized by the City Attorney.

(4) At the close of the hearings and within thirty (30) days, the board shall prepare findings and reach a decision agreed upon by a majority of the board which shall be filed with the City and served by mail upon the Company. Unless the parties extend by mutual agreement the time which the board has to make a decision, the proceedings shall become null and void and shall be started anew.

(5) The decision of the board shall be final and binding upon the parties.

(6) Either party may seek judicial relief in the following circumstances:

- (a) a party fails to select an arbitrator;
- (b) the arbitrators fail to select a third arbitrator;
- (c) one or more arbitrator is unqualified;

**CABLE TV PROPOSALS
MARCH 31, 1980**

- (d) designated time limits have been exceeded;
- (e) the board has not proceeded expeditiously;
or,
- (f) based upon the record, the board abused
its discretion.

(7) In the event a court of competent jurisdiction determines the board has abused its discretion, it may order the arbitration procedure repeated and issue findings, order and directions, with costs of suit to be awarded to the prevailing party.

(8) Cost of arbitration shall be borne equally, unless the board finds the offer of the City or the demand of Company was unreasonable, in which case, cost may be apportioned so that less or none of the costs may be borne by one party.

ARTICLE V. MISCELLANEOUS PROVISIONS.

Section 1. NOTICE.

(a) Any notice for which time is not otherwise provided, which is required by law or by this Agreement, shall be made by publication in a local newspaper of general circulation at least ten (10) days prior to the meeting and by posting similarly at City Hall. Additionally, all meetings shall be announced at least on one channel of the CATV system between the hours of 7:00 p.m. and 9:00 p.m. for five (5) consecutive days immediately preceding the meeting or hearing.

All notices from Company to the City pursuant to this Agreement shall be to the City Clerk, unless otherwise provided. The Company shall maintain within the City, throughout the term of this franchise, an address for service of notices by mail. Company shall also maintain within the City a local office and telephone number for the conduct of matters related to this franchise during normal business hours.

**CABLE TV PROPOSALS
MARCH 31, 1980**

(b) The Company shall pay the costs associated with the publication of any notice required herein or otherwise mandated by law.

Section 2. BOOKS AND RECORDS.

(a) All books and records of the Company relating to its Omaha operations shall be open to the public subject to reasonable standards and rules with respect to inspection.

(b) The Company agrees to keep on file with the City a current list of all stockholders holding 1% or more of the outstanding stock. The list shall show the amount of such ownership and reflect the officers and their current addresses. The list shall be updated every thirty (30) days to reflect any changes in ownership of any stock.

(c) All financial reports required to be filed with any source or which are otherwise prepared by the Company shall be supplied to the Finance Director of the City.

Section 3. RELOCATION. Whenever the City, County or State of Nebraska shall require the relocation or reinstallation of any property of the Company, it shall be the obligation of the Company, upon notice of at least thirty (30) days, to immediately remove and relocate or reinstall said property at the expense of the Company, as may be reasonably necessary to meet the requirements of the City, County or State.

Section 4. MUNICIPAL USE OF COMPANY FACILITIES. The City shall for any lawful purpose have the right, throughout the term of this franchise, to install and maintain free of charge upon the poles owned by Company any wire and pole fixtures that do not unreasonably interfere with the CATV operations of the Company. The City agrees to indemnify, defend and hold harmless the Company from any liability resulting from the negligence of the City, or its employees, in its use thereof.

Section 5. CATV ADVISORY COMMITTEE. The Company agrees to work reasonably with and support the activities of Omaha CATV Advisory Committee.

CABLE TV PROPOSALS
MARCH 31, 1980

Approved
By the City #377
(S) 377

Section 6. REMOVAL OF FACILITIES. Upon termination of service to any subscriber, the Company shall at its own expense promptly remove all of its facilities and equipment from the premises of such subscriber upon his written request.

Section 7. OTHER PETITIONS AND APPLICATIONS. Copies of all petitions, applications, including application for any franchise by the Company or its parent corporation, communications and reports submitted by the Company to the Federal Communications Commission, Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting cable television operations authorized pursuant to the franchise, shall be provided to City no later than the filing date for such petitions, applications, communications and reports.

Section 8. COMPANY RULES AND REGULATIONS. The Company shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the Company to exercise its rights and perform its obligations, and to assure an uninterrupted service to each and all of its customers. Provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or applicable local, state and federal laws, rules and regulations.

Section 9. LOCKOUT DEVICE. The Company agrees to supply free of charge a device sufficient to lockout any pay cable services to any subscriber requesting such device, provided that the Company shall also inform all subscribers that such a device is available.

Section 10. TRANSFER OF OWNERSHIP OR CONTROL.

(a) The Company agrees that its franchise shall not be assigned or transferred, either in whole or in part, or leased, sublet, or mortgaged in any manner, nor shall title

CABLE TV PROPOSALS
MARCH 31, 1980
CABLE TV PROPOSALS
MARCH 31, 1980

thereto, either legal or equitable or any right, interest or property therein, pass to or vest into any person without the prior written consent of the City.

Company may, however, transfer or assign the franchise to a wholly owned subsidiary of the Company and such subsidiary may transfer or assign the franchise back to the Company without such consent. The proposed assignee must show financial responsibility as determined by the City and must agree to comply with all provisions of the franchise. City shall be deemed to have consented to a proposed transfer or assignment in the event its refusal to consent is not communicated in writing to Company within sixty (60) days following receipt of written notice of the proposed transfer or assignment.

(b) The Company shall promptly notify the City of any actual or proposed change in, or transfer of, or acquisition by any other party of, control of the Company. The word "control" as used herein is not limited to major stockholders but includes actual working control in whatever manner exercised. Every change, transfer, or acquisition of control of the Company shall make the franchise subject to cancellation unless and until the City shall have consented thereto, which consent will not be unreasonably withheld. For the purpose of determining whether it shall consent to such change, transfer or acquisition of control, the City may inquire into the qualification of the prospective controlling party, and the Company shall assist the City in any such inquiry.

(c) The consent or approval of the Council to any transfer of the Company shall not constitute a waiver or release of the rights of the City in and to the streets, and any transfer

CABLE TV PROPOSALS
MARCH 31, 1989

shall by its terms be expressly subordinate to the terms and conditions of this franchise.

(d) In the absence of extraordinary circumstances, the City will not approve any transfer or assignment of the franchise prior to substantial completion of construction and activation of proposed system.

Section 11. REMOVAL OF CATV SYSTEM.

(a) At the expiration of the term for which this franchise is granted, or upon its termination as provided herein, or otherwise by law, Company shall forthwith, upon notice by City, remove at its own expense all-designated portions of the CATV system from all highways, sidewalks, easements, dedications and public property within the City. If Company fails to do so, City may perform the work at Company's expense. Provided that the Company shall be entitled to receive notice in writing from the City setting forth one or more of the occurrences hereinafter provided, and that the Company shall have nine (9) calendar months from the date upon which said notice is received to remove said properties as hereinabove required. Provided further, the Company shall cooperate with and shall not interfere with any other grantee of a cable franchise for the City. If the Company fails to do so, the City may perform the work at the Company's expense. A bond in the amount of One Million (\$1,000,000) Dollars to cover this expense shall be forwarded within ten (10) days hereof by the Company.

(b) The Director of Public Works of the City is herein and hereby authorized to enforce the provisions of this section of this Agreement as hereinafter provided:

(1) The Director shall notify the Company in writing of any occurrence provided for in this Agreement, for which said franchise may be terminated, forfeited, revoked, or declared void by the City, and that within nine (9) calendar months following receipt of said notice, the Company shall remove from

the streets of the City upon, over and under which its properties are located, all of said properties, unless otherwise authorized and permitted by the Director of Public Works.

(2) The Director of Public Works may declare abandoned any property of the Company remaining in place nine (9) calendar months after notification from the Director as hereinabove provided, and the same shall be considered permanently abandoned property, unless the Director of Public Works extends the time for removal of said property for a period not to exceed thirty (30) additional days.

(c) Any property abandoned by the Company as hereinabove or hereinafter provided 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; provided that any notice given the Company by the Director of Public Works of the City, as provided in this section, shall be deemed notice to any other persons claiming interest in said property of the Company and said persons shall be subject to all the provisions hereinbefore provided.

Section 12. EMINENT DOMAIN. Nothing herein shall be deemed or construed to impair or affect, in any way to any extent, the right of the City to acquire the property of the grantee through the exercise of eminent domain, at a fair and just value, which shall not include any amount for the franchise itself or for any of the rights or privileges granted, or for relocation, and nothing shall be construed to contract away or to modify or abridge, either for a term or in perpetuity, the City's right to eminent domain.

Section 13. COMPANY TO HAVE NO RECOURSE. Except as expressly provided in this Agreement, the Company herein shall have no recourse whatsoever against the City for any loss, cost or expense or damage arising out of any of the provisions

or requirements of this Agreement or law or because of the enforcement thereof by the City, nor for the failure of the City to have the authority to grant all or any part of any franchise. The Company expressly acknowledges that, in accepting its franchise by executing this Agreement, it did so relying upon its own investigation and understanding of the power and authority of the City to grant a franchise. By accepting its franchise and becoming signatory hereto, the Company acknowledges that it has not been induced to enter into this Agreement by any understanding or promise or other statement, whether verbal or written, by or on behalf of the City or by any other third person concerning any term or condition not expressed herein. The Company further acknowledges by the acceptance of its franchise that it has carefully read the terms and conditions hereof, and of law, and is willing to and does accept all of the risks of the meaning of such terms and conditions and agrees that, in the event of any ambiguity therein or in the event of any other dispute over the meaning thereof, the same shall be construed strictly against the Company and in favor of the City.

Section 14. FAILURE OF CITY TO ENFORCE THIS AGREEMENT — NO WAIVER OF THE TERMS THEREOF. The Company shall not be excused from complying with any of the terms or conditions of this Agreement of the law by any failure of the City upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions.

Section 15. TIME ESSENCE OF THIS AGREEMENT. Whenever this Agreement shall set forth any time for any action to be performed by or on behalf of the Company, such time shall be deemed of the essence and any failure of the Company to perform within the time allotted shall always be sufficient grounds for the City to revoke its franchise.

Section 16. EQUAL EMPLOYMENT OPPORTUNITY CLAUSE. In addition to that provided by applicable law during the performance of this agreement, the Company agrees as follows:

CABLE TV PROPOSALS
MARCH 21, 1970

(1) The Company shall not discriminate against any employee applicant for employment because of race, religion, color, sex or national origin. The Company shall take affirmative action to insure that applicants are employed and that employees are treated during employment, without regard to their race, religion, color, sex or national origin. As used herein, the word "treated" shall mean and include, without limitation, the following: recruited (whether advertising or by other means) compensated, selected for training, including apprenticeship, promoted, upgraded, denoted, downgraded, transferred, laid off, and terminated. The Company agrees to and shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officers setting forth the provisions of this nondiscrimination clause.

(2) The Company shall in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex or national origin.

(3) The Company shall send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding a notice advising the labor union or worker's representative of the Company's commitments under the Equal Employment Opportunity Clause of the City of Omaha and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Company shall furnish to the Contract Compliance Officer all Federal forms containing the information and reports required by the Federal government for Federal contracts under Federal rules and regulations, and including the information

**CABLE TV PROPOSAL
MARCH 31, 1979**

required by Sections 5.28.070 to 5.28.090, inclusive, and shall permit reasonable access to his records. Records accessible to the Contract Compliance Officer shall be those which are related to paragraphs 1 through 7 and only after reasonable notice is given the Company. The purpose for this provision is to provide for investigation to ascertain compliance with the program provided for herein.

(5) The Company shall take such actions with respect to any subcontractor as the City may direct as a means of enforcing the provisions of paragraphs 1 through 8 herein, including penalties and sanctions for noncompliance, provided, however, that in the event the contractor becomes involved in or is threatened with litigation as the result of such directions by the City, the City will enter into such litigation as is necessary to protect the interests of the City and to effectuate the provisions of the Ordinance and in the case of contracts receiving Federal assistance, the Company or the City may request the United States to enter into such litigation to protect the interests of the United States.

(6) The Company shall file and shall cause his subcontractors, if any, to file compliance reports with the Company in the same form and to the same extent as required by the Federal government for Federal contracts under Federal rules and regulations. Such compliance reports shall be filed with the Contract Compliance Officer. Compliance reports filed at such times as directed shall contain information as to the employment practices, policies, programs and statistics of the contractor and his subcontractors.

(7) The Company shall include the provisions of paragraphs (1) through (7) of this Section, Equal Employment Opportunity Clause, and Section 5.28.080 in every subcontract or purchase order so that such provisions will be binding upon each subcontractor or vendor.

**CABLE TV PROPOSALS
MARCH 31, 1980**

Section 17. SALE OR SERVICE OF TELEVISION RECEIVERS.


The Company shall not engage in the sale, lease or repair of television or radio receivers or their appurtenances. The Company shall not require or recommend that any subscriber utilize the services of any specific television/radio service business for the repair or maintenance of the subscriber's receivers, or their appurtenances, either radio or television. No grantee shall require or recommend that any subscriber purchase, rent or lease any radio or television receiver or their appurtenances from any specific television/radio service business. Nothing herein shall be construed to preclude the sale, repair or leasing to such subscribers of such appurtenances which by their nature are solely necessary for the purpose of receiving or transmitting cable services. Breach of this provision shall be sufficient grounds for termination of the Company's franchise.


Section 18. SEVERABILITY. If any section, subsection, clause, phrase or portion of this Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

Section 19. This Agreement shall be effective from and after execution of the same by the City and shall remain in effect throughout the length of the term of the franchise extended to the Company, not to exceed fifteen (15) years, unless mutually terminated by the parties hereto, or otherwise concluded in accordance with the provisions hereof or applicable law.

IN WITNESS WHEREOF, the foregoing agreement is dated this 28th day of March, 1980.

Attest:


Secretary
Cox Cable Communications, Inc.


President (or his/her designated representative)
Cox Cable Communications, Inc.

CABLE TV PROPOSALS
MARCH 31, 1980

Attest:

CITY OF OMAHA, a municipal corporation,

Mary Gabeys Cornett
City Clerk of the City of Omaha

by Lee T. ... 9/4/80
Mayor of the City of Omaha

Approved as to Form:

[Signature]
Assistant City Attorney

CABLE TV PROPOSALS
MARCH 31, 1980

AN ORDINANCE to grant a Cable Television Franchise for the City of Omaha; to provide that such Franchise shall be subject to compliance with the law including that of the Omaha Municipal Code and performance pursuant to the provisions of the Agreement previously filed with the City Clerk; to authorize the Mayor and City Clerk to execute and attest accordingly the filed Agreement, and to provide the effective date hereof.

Presentations from
1) Cox Cable
2) Omaha Telecommunications, Inc.
3) 25 Cable Television

JUL 25 1980 - 1st Reading
Public Hearing
Presentations from

1) Warner-Ames
2) Submitter of Ordinance
3) Cox Cable

AUG 19 1980 ²⁹²⁵⁴ Motion by Wassett that the Ordinance be amended to read Cable Commons. Carried 7-0

²⁹⁸⁹ Motion by Rauscher that the Ordinance be amended to read Cox Cable of Omaha, Inc. Carried 5-0-2 passing

Sub Motion by Wassett that Ordinance be placed on July 24th by Wassett. Carried 5-0-2

Carried 7-0 SEE BACK FOR P.H.

2990 Passed - as amended 5-0-2 Carried 10-0-2 To mean, unamended. Shows the benefit schedule in unamended.

PRESENTED TO COUNCIL

1st Reading JUL 15 1980

Hearing 7-22-80

2nd Reading JUL 22 1980 Motion by Wassett to continue Public Hearing to 7-24-80 & 7-25-80 2nd by Wassett Carried 7-0

Final Reading JUL 29 1980 Motion by Wassett to bring ordinance to 8-19-80 Carried 7-0

Wassett, City Clerk

ORDINANCE

PUB'N. OF HEARING

Date 7/15/80 7/17/80
7/20/80 7/23/80 7/26/80 7/29/80

PUB'N. OF ORDINANCE

Date 8/29/80

Amended by
Doc # 25325 - 01
8/23/83 (SAM)

ADDENDUM "A"

(To Franchise Agreement September 4, 1980, Between
Cox Cable of Omaha, Inc., and City of Omaha)

This Agreement is made and entered into this 23rd day of August, 1983, between the City of Omaha, a Municipal Corporation (hereinafter "City"), and Cox Cable of Omaha, Inc., (hereinafter "Cox").

RECITALS

WHEREAS, Cox is currently operating a cable television system within the corporate limits of the City pursuant to a franchise agreement effective September 4, 1980; and,

WHEREAS, that agreement mandates certain performance by Cox in accordance with the terms and conditions set forth therein; and,

WHEREAS, both the City and Cox have maintained a legal posture related to their respective rights and obligations associated with that agreement; and,

WHEREAS, it is the desire of both Cox and the City to resolve their differences in an amicable manner.

NOW, in consideration of the premises, it is agreed by and between them as follows:

It is the purpose of this Addendum to clarify and address certain issues which have surfaced in connection with Cox operations within the City, together with the obligations and performance of the respective parties arising from and out of the current franchise agreement between Cox and the City. It is neither the intent of this instrument, nor shall it be construed to alter or otherwise affect any right or obligation of either party with respect to any matter applicable to the franchise yet not specifically set out herein. In that regard, the terms and conditions of the current franchise agreement, to which this Addendum shall be appended, shall have full force and effect.

It is, therefore, agreed by and between those parties signatory hereto, on behalf of themselves, heirs and assigns, that the current franchise agreement, effective September 4, 1980, between Cox and the City shall be modified only in the following respects:

1. PUBLIC ACCESS:

(a) The time for completion of construction and fully equipping the South access studio shall be extended until July 31, 1983.

(b) The time for providing cameras intended to be maintained at the West access studio shall be extended until March 31, 1984. The time for completion of the full turn-on of the West access studio (i. e. supplying the necessary control panel) shall be extended until March 31, 1984; provided,

i) The studio shall be completely serviceable for public access purposes during the interim by use of the remote van;

ii) All equipment other than cameras (which shall be transported by van) and the control panel shall be in place by no later than July 31, 1983;

iii) All operational parameters set forth in the franchise proforma, as applicable to access studios, shall be observed by Cox during the interim; and,

iv) If need becomes apparent during this interim, the foregoing provision (b) shall become null and void. Cox shall fully perform within thirty (30) days following written notice from the City.

(c) The Downtown access studio shall be relocated to the main facility of Cox at 50th and Capitol Streets in Omaha; provided,

i) All operational parameters set forth in the franchise proforma, as applicable to access studios, shall be observed by Cox during the interim; and,

ii) All other equipment or studios located at the Capitol site shall be made available for public access purposes, unless being utilized by Cox.

(d) The time for providing a second remote van is extended until it is apparent that a single remote van for access purposes is not sufficient to meet the community need in the opinion of the City. In the interim, the current van (and its replacements) shall be maintained and replaced (with comparable equipment) in accordance with the amortization schedule set out in the franchise proforma.

(e) It is understood that a primary benefit of a cable television system is the ability of the community to avail itself of the opportunity to exercise its right of free speech by the use of modern technology in the form of public access. To facilitate this opportunity, Cox shall establish a program incident upon the development of community public access, including the generation of programming. In that regard, Cox shall attempt to have not less than sixteen hours of non-repeat weekly public access programming to be carried on channels designated; provided, that Cox assures the City ~~that such programming~~ shall be in place by no later than March 31, 1984. Further, Cox and the City agree that the success of public access is largely dependent upon the promotion of public access, including its availability.

Therefore, in addition to maintaining its current workshops and training efforts, Cox shall, concurrent with the effective date of this agreement, establish a program for the purpose of aggressive promotion of this service. Promotion, which shall be subject to periodic review by CTAC, shall include, by way of example, the use of newsletters, billboards, cross-channelling, and contacting previously and subsequently trained individuals.

(f) All Public Access Programming shall be carried on the Universal Tier (free tier) throughout the term of the franchise.

(g) Cox acknowledges the value of other community access programming to the system which currently is being independently produced for carriage on designated channels. Being mindful of the need to facilitate the further development and expansion of those services, Cox agrees to promote that programming in a manner similar to that being undertaken for Public Access (e).

2. LOCAL ORIGINATION:

(a) Cox shall provide at a minimum thirty-five (35) hours weekly of non-repeat "local origination" programming at least 80 percent of which shall be locally produced. Programming shall include all that specified within the franchise proforma or its equivalent.

(b) Compliance with the hourly production requirement shall be ascertained by computing the average weekly hours over the course of a calendar year. For purposes of computing hours of weekly programming, no credit shall be allocated to programming produced for public or other community access.

(c) Cox shall attempt to have all of such programming in place by January 1, 1984; however, Cox assures that such programming shall be in place by no later than March 31, 1984.

(d) All local origination programming shall be carried on the Universal Tier (free tier) throughout the term of the franchise.

3. GOVERNMENTAL ACCESS:

(a) It is the purpose of this paragraph to provide the City, its residents and ratepayers with continuous quality production governmental access programming. Cox understands and agrees that such programming can be assured at this time only through extensive involvement of its experience and expertise.

(b) Cox shall, concurrent with the effective date of this agreement, establish a corporate program employing all personnel necessary to train, supervise, and monitor college (or graduate level) individuals (to be selected by Cox) in order to perform all work necessary (including camera work, filming, and the presentation and delivery) to provide narrowcast quality planned governmental access programming. Cox assures the continuity of this program throughout the franchise.

(c) Cox shall dedicate at least one professional staff person to develop governmental access programming for the above-referenced program, who shall also develop and work with the City in developing governmental access programming.

(d) The City reserves the right to review all such programming prior to its being aired. No live programming shall be carried on the governmental access channel without prior notice to the City.

4. RATE FREEZE:

(a) Except as otherwise provided herein, rates for basic service (Tiers II and III) shall be subject to increase as of October 1, 1984; provided, however, that all requirements of rate regulation are met. Cox understands and agrees that this provision shall not be construed to guarantee it any increase in those rates. To the contrary, Cox may, at that time (and not before), implement only such a rate increase if resulting from a petition filed on its behalf for such purposes and duly considered and approved by the City.

(b) Rates for premium service shall be subject to increase in accordance with the following schedule:

Home Box Office:	September 1, 1984
Showtime:	September 1, 1984
Home Theater Network:	September 1, 1984
All other services:	January 1, 1985

provided, that Cox shall first observe all contract requirements relative to rate increases for such services prior to implementing any new rates therefor.

5. CONSTRUCTION BOND:

(a) It is agreed that the current construction bond assuring completion of the system in accordance with the proforma shall be terminated as of August 31, 1983, conditioned upon the following:

i) The main cable system (A) shall be fully constructed, activated, and marketed throughout the City, as contemplated by the original franchise, by no later than August 31, 1983. To the extent failure to meet the foregoing is beyond the fault of Cox, (eg. failure to obtain easements, consents, adequate poles, despite reasonably diligent efforts by Cox), this condition shall not apply; provided that Cox shall apprise the City Council staff and CTAC of construction and marketing progress, including evidencing where construction, etc., is not complete, together with the reasons therefor. Cox shall similarly advise the staff and CTAC of installation progress, it being understood that the same shall be completed by no later than September 30, 1983.

ii) Indax two-way service (as contemplated by the franchise) shall be provided in Omaha on or before December 31, 1985, unless extended by the City Council. In addition to such other remedies which may be available to the City, the construction bond shall be thereafter reinstated until such services are being provided.

iii) The Institutional Network shall be complete and activated for use by no later than September 30, 1983. In addition to such other remedies which may be available to the City, the construction bond shall be thereafter reinstated until the Network is completed and available for use as contemplated herein and by the franchise.

iv) Cox shall fully cooperate with the City Council staff and CTAC concerning its progress on (ii) and (iii).

(b) It is expressly agreed that termination of the construction bond shall not relieve Cox of any obligation of its franchise, nor shall termination be construed as acceptance of the system. In that regard, the City reserves all rights heretofore existing with respect to this matter until the system is accepted, including any remedies which may lie against the surety under that bond for the failure of Cox to complete construction and/or provide all services in accordance with its contract. Cox shall secure a written acceptance in the City's favor from the surety in this regard prior to the effective date of the ordinance authorizing the execution of this Addendum. Failure to do so shall render this provision (5) void, and the construction bond shall not be terminated. In such event, notwithstanding any provision herein to the contrary, the City shall be free to exercise any rights pertaining thereto, resulting from the failure of Cox to provide timely construction of the system and delivery of all services required. In no event shall the system be construed as being accepted by, or acceptable to, the City until construction is completed and each and all services are provided in accordance with the franchise.

(c) All other guarantees of the franchise, including the letter of credit, shall be maintained by Cox.

6. INDAX:

(a) It is recognized by Cox that its commitment to providing Indax to the City in the manner contemplated by the franchise remains an integral element of its franchise. Therefore, while the City, by this Addendum, hereinafter agrees to an extension of time to Cox by which to provide two-way Indax services until not later than December 31, 1985; nothing herein shall be construed to relieve Cox of its obligations to provide those services. This extension is further conditioned upon the following:

i) Concurrent with the effective date of this agreement, all non two-way services originally designated as Tier IV service for a \$1.00 per month charge shall be provided to all Tier III subscribers at no additional charge. Such services shall include at a minimum: representative airline, bus and train schedules; availability of tickets for activity at all city facilities (including the Orpheum, Music Hall, Civic Auditorium, etc.), and such locations required by the proforma or selected by Cox; information concerning city tours, special events within the city; the educational course offerings of local universities and colleges; emergency and public information numbers (formerly Tier V); restaurant listings (formerly Tier V), including information on cuisine, reservations, credit cards and location; World-Herald provided real estate listings and horoscope information; and a new service - "personal messages". Cox agrees to continue to develop new services of a similar nature.

ii) Cox agrees that at no time during the franchise will it use or attempt to use the costs of maintaining or providing those services (i) to support any petition for a rate increase for Tiers I, II or III.

iii) The revenue, if any, from the foregoing service (i) shall be subject to the franchise fee.

iv) All two-way Indax features contemplated by the franchise shall be provided by no later than December 31, 1985, unless the obligation to provide the same is either relieved or extended by resolution of the City Council on or before that date; provided that during such time or in the event that Cox is so relieved, or the time for providing the same is extended, throughout the term of the franchise such services or their equivalent shall be test marketed in Omaha to determine consumer acceptance commensurate with the full commercial release of two-way Indax services in any other Cox market. Cox shall exercise every resource at its disposal to provide these services by December 31, 1985. If, however, despite such undertakings by Cox two-way Indax is not provided in Omaha by that date, the City agrees to not impose liquidated damages subsequent to that date for Cox's failure to provide these services upon a clear demonstration of Cox that such services are neither consumer acceptable nor commercially viable in Omaha. In determining whether Cox has met its burden in that regard, the City shall reasonably consider the written analysis of an independent and mutually acceptable marketing analyst, the cost of the preparation and presentation of which shall be that of Cox. Provided that, in the event Cox has met this burden at that time, it shall nevertheless thereafter continue to similarly review and assess periodically the consumer acceptance and commercial viability of those services in Omaha in a manner intended to enable the City Council to determine whether Cox should be obligated to then commence test marketing of the same in Omaha.

It is understood that the City has experienced a loss of anticipated franchise fee revenues which otherwise would have been paid resulting from providing these services in Omaha during the period from July, 1983, through December 31, 1985. Therefore, Cox shall pay to the City, on a quarterly basis, concurrent with and in addition to the applicable franchise fee, an amount computed at the rate of \$15,000 per month, or any part thereof, for the period commencing July, 1983, through and including December 31, 1985, notwithstanding that such services may be provided in Omaha during any part of that time. It is further agreed that at no time during the franchise will Cox use or attempt to use any amounts paid to the City pursuant to this provision (iv) to support any petition for a rate increase for Tiers I, II or III.

v) During the period and extension, Cox will evidence continued development of those services identified by (iv) to CTAC and the City which shall include quarterly reports on technical and marketing information (including service providers). Cox shall verify all information to the appropriate City officials upon request.

vi) At the time those services (iv) are made available within the City, the price for the same shall not exceed \$3.45 (current price differential) above the cost of receiving Tier III. The itemized price differential shall be frozen for a period of not less than two years and three calendar months following the availability and commencement of the open public marketing of all Indax services (iv).

vii) The Omaha system shall be provided with sufficient converters necessary to meet the demand for those services (iv); provided that Cox may charge a \$50.00 deposit on Indax (two-way) converters when provided to Indax (two-way) subscribers. The deposit shall be fully refundable when returned in accordance with the current subscriber's agreement which shall remain the same in all other respects.

(b) All revenues resulting from the delivery of any Indax or Indax related service shall be included in the gross revenue base upon which Cox payment of franchise fees to the City shall be computed.

7. INSTITUTIONAL NETWORK:

(a) The time for completion of construction, operation, and full activation of the Institutional Network (B) shall be extended until September 30, 1983.

At the time of completion of construction, the network shall be installed at all City-owned facilities set out in the franchise proforma, except traffic lights; provided that, at any time during the franchise, the network shall be extended and installed to all other City-owned facilities, including traffic lights, on an as needed basis -- in the opinion of the City -- at no additional cost. For purposes of this paragraph, installation at all City facilities shall include:

i) Passing each City facility with the network;

ii) Linking each facility to the network; and,

iii) Providing a maximum of three drops within each facility in such a manner so as to permit the City's use of the network. However, it is understood that the maximum number of drops at any facility(ies) designated by the City may be increased with a corresponding downward adjustment of the maximum drops at any other facility(ies) designated by the City. Cox shall provide any additional drops requested by the City on a cost to Cox basis.

(b) Construction and full activation of the Institutional Network shall include all technical requirements of that system, more particularly described in the franchise proforma, and shall include accessing those non-City owned facilities to the Network, together with providing all equipment thereto in the manner specified by the proforma.

(c) Throughout the term of the franchise, the City shall be provided free use of:

i) Two full duplex 6 mhz channels within the Network. Each channel shall provide at a minimum 35 data circuits, each circuit being capable of transmitting data or video signals to a maximum of 10 remote locations within the network which may be designated by the City; or

ii) One such channel and an exclusive complete cable system to be installed completely at the expense of Cox and to be fully maintained by Cox throughout the franchise. Installation of the cable system shall connect the Omaha/Douglas Civic Center, the Hall of Justice, and the computer center located at 1910 Harney and shall include providing all associated drops to permit the City to fully utilize the system.

iii) Throughout the franchise, all costs of emergency installation, repair, maintenance, and other similarly related costs for the channels and the system shall be the sole responsibility and obligation of Cox.

iv) It is specifically agreed that the only costs to the City throughout the franchise from its use, if any, of the channels (i) or system (ii) shall be that associated with the necessary modems, modulators, or demodulators (other than those direct and indirect for City personnel). However, to permit the City to ascertain the potential use of the above, Cox agrees to loan the City sufficient equipment to permit it to fully utilize those channels or the system for data or video transmission, without obligation or charge, for a period of not less than six months to commence at a time to be designated by the City. In the event the City opts for the one channel/cable system package, Cox shall loan to the City sufficient modems, modulators, demodulators, or other equipment to permit full utilization of the duplex channel and the full functional capacity of at least three channels in the system (ii). With either option, Cox agrees to fully train City personnel in the use of these options and to work with the City in developing and determining their full potential. Cox shall also loan to the City two modems for use at any location designated by the City for a period of one year, commencing at a time to be later determined by the City.

v) If at the end of this period the City concludes to not use all or any part of the system or channels, Cox shall remove all or such part of the equipment as may be designated by the City at no charge. Installation (both (a) and (b)), however, shall remain in order to permit the City to subsequently utilize the channels or system merely by leasing or purchasing the necessary modems, modulators or demodulators. Notwithstanding the City's decision to not immediately utilize the channels or system, Cox shall continuously maintain the same in good working order throughout the franchise.

vi) In the event the City determines to use the channel or system at any time during the franchise, Cox shall lease to the City all necessary modems, modulators, or demodulators on an actual cost to Cox basis. If such equipment is leased by the City, Cox shall assume all costs of its maintenance and all liability arising from the City's use of the same. Alternatively, the City may opt to purchase that equipment from a Cox-approved vendor on a direct cost to Cox basis.

vii) The City shall exercise its options relative to this paragraph (c) within a reasonable time following the effective date of the Addendum, or when otherwise may be appropriate. If the City opts in favor of the system package, complete ownership of the system shall pass to the City upon the termination of the franchise.

(d) All revenues resulting to Cox (or Comcline) from operations related to the Institutional Network shall be included in the gross revenue base upon which Cox payment of franchise fees to the City shall be computed.

8. INDEPENDENT NETWORKS:

All independent television networks currently being carried by Cox, as a part of Tier III basic programming services, shall be maintained on Tier III by Cox throughout the franchise period at no extra cost apart from that ordinarily applicable to Tier III.

9. FEDERAL LEGISLATION:

In the event that any material provision of this Addendum or of the franchise agreement, including applicable municipal ordinances or any right or privilege of the City in connection with any of the foregoing is adversely affected, in the opinion of the City, by any legislative or other regulatory action (subsequent to the execution of the original franchise and this Addendum) by the federal or state government, their agencies, their departments, their division, or their employees, including congress and the legislature of the state of Nebraska, the City shall have the right, if reasonably exercised, to modify any of said provisions so affected where necessary to carry out the full intent and purpose of the franchise agreement and this Addendum as either may be amended from time to time; provided, however, that the City's reasonable exercise of its discretion to modify such provisions shall be fully consistent with Article 1, Section 5, of the franchise agreement, "Compliance with State and Federal Laws." Cox Cable Omaha, together with its parent, by its signature hereto and on behalf of its assigns, agrees to comply fully with any such modification resulting from the City's exercise of the provisions of this paragraph (9) and not to challenge in any way the City's reasonable exercise of such discretion. Cox also agrees to take no action to void, attempt to void, not to support any matter intended to void or adversely affect the right of the City accorded hereunder; provided, however, and notwithstanding the foregoing, nothing herein is intended to, nor shall restrain the City, Cox or its' parent from exercising their right to petition the congress and/or legislature of the state of Nebraska for redress and to introduce, support or oppose, legislation which may be considered or proposed by such legislative bodies.

10. ACCOUNTING PRACTICES:

(a) For purposes of ascertaining "gross revenues," Cox shall be permitted to deduct from "accrued gross revenues" actual bad debt loss taken during the applicable franchise period; provided that this deduction and Cox's debt collection practice shall remain subject to the review of the City's Finance Director for determining acceptable industry practice.

(b) Gross revenues shall not include promotion monies paid to Cox by programming services to the extent such monies represent reimbursement to Cox for promotion expenditures paid by Cox to non-Cox affiliated resources.

(c) Nothing herein shall be construed to alter the current franchise definition of "gross revenues."

11. CITY RECOURSE:

In the event this Addendum or any part thereof is successfully challenged by any person other than the parties to this Addendum in a body of competent jurisdiction, Cox shall reinstate its' construction bond until the system is fully constructed, activated, and installed, including the delivery of all Index services contemplated by the franchise proforma. In addition, the City and Cox shall act in accordance with the applicable provisions of the franchise agreement related to changes in law.

11. CITY RECOURSE: (continued from page - 9 -)

The City shall not, by this Addendum, be deemed to have waived any rights it may have related to any matter identified herein. In the event Cox does not meet each and all terms and conditions hereof within ten days following written notice of such failure from the City, the City may immediately terminate this Addendum and avail itself of all such rights and remedies, including, where applicable, the imposition of liquidated damages retroactively to July 5, 1983, reinstatement of the construction bond, or revocation of the franchise.

12. SEVERABILITY:

Except as otherwise provided by this Addendum, each provision herein shall be severable. In the event that all or any part of this Addendum is successfully challenged by any person other than the City or Cox, including its subsidiary parent, affiliate, or assigns, by the valid judgment or decree of a body of competent jurisdiction shall not affect any of the remaining provisions.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

ATTEST:

CITY OF OMAHA, a Municipal Corporation,

ING
DEPUTY

by *Quace L. Mathias*
City Clerk

by *Michael Boyle* 8/25/83
Mayor of the City of Omaha

ATTEST:

COX CABLE OF OMAHA, INC.,

by *Cornelia Jordan*

by *Donald W. Casarelli*

ATTEST:

COX CABLE COMMUNICATIONS, INC.,

by *Gennifer J. Chown*

by *Carl R. [Signature]*

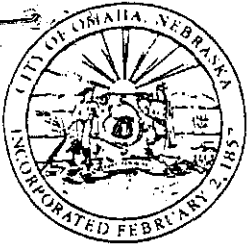
APPROVED AS TO FORM:

Assistant City Attorney

I hereby certify that the foregoing is a true and correct copy of the original document now on file in the City Clerk's office.

.....
CITY CLERK
BY
.....





ORD 30457

1984 AUG 16 PM 2:41

City of Omaha

Michael Boyle, Mayor

Law Department

Omaha/Douglas Civic Center
1819 Farnam Street, Suite 804
Omaha, Nebraska 68183
(402) 444-5115

Herbert M. Fittle
City Attorney

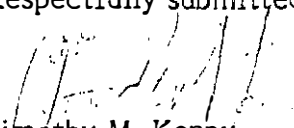
Honorable President

and Members of the City Council,

Attached for your consideration is an Ordinance amending the existing franchise between the City and Cox to accommodate a compromise of both parties' positions relative to recent actions by Cox in its operations, including unilateral rate increases for Tiers II and III customers, as well as franchise fee reductions.

Exhibit "A" is at this time the same draft presented to you in executive session. A final executed Memorandum of Understanding will be provided in time for the public hearing on this matter. The final should be substituted, if approved, at the time of your vote on the Ordinance.

Respectfully submitted,


Timothy M. Kenny
Assistant City Attorney

7C11:36

(L)

MEMORANDUM OF UNDERSTANDING

September
This Agreement is made and entered into this ~~17th~~ day of August 1984 by and between the City of Omaha of Douglas County Nebraska, a municipal corporation of the metropolitan class and a political subdivision of the State of Nebraska (hereinafter "City") and Cox Cable Omaha, Inc. duly organized and created to do business in the State of Nebraska, a subsidiary of Cox Cable Communications, Inc. (hereinafter "Cox").

RECITALS

Those matters recited within Ordinance No. 30457, to which this Agreement is appended and by which this Agreement shall be given full force and effect, following execution hereof by each party shall be incorporated herein by reference.

IT IS AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. PURPOSE: It is the purpose hereof to amicably resolve those disputes between the City and Cox which have arisen from and out of actions taken by them subsequent to the grant and execution of a cable television franchise and which are identified herein. It is understood and agreed that whether as a result of the act of either party the terms and conditions hereof are not met in their entirety or in the event that this Agreement is voided in whole or in part, including reformation by a court of competent jurisdiction or by any action of the FCC, the City and Cox shall be entitled to avail itself of all rights and remedies which exist currently or are then existing. Such rights and remedies shall include without limitation and at the discretion of the City, the imposition of liquidated damages, voiding in whole or in part the franchise addendum of September, 1983 and the revocation of the franchise.

2. RATES: The rates for TIER II and TIER III services for the period July 1, 1984 through September 30, 1984 shall be the same as that charged by Cox prior to July 1, 1984. Any person who has paid the increased rate for that period and who is a current customer shall be given credit for any such payment made. Persons who have paid the increased rate and who have terminated service for any reason whatsoever (except non-payment) shall be given a refund for any such payment made. Cox shall exercise its best efforts to provide the appropriate credit or refund within 90 days from the effective date hereof.

3. RATE REGULATION: After October 1, 1984 unless then or thereafter permitted by law (in which case existing contractual provisions shall prevail) future rates for TIER II and TIER III, as well as other specialized or non-broadcast services shall not be subject to regulation by the City. For purposes of this paragraph, "permitted by law" shall include without limitation applicable federal statutes, state statutes (unless validly pre-empted), municipal ordinance (unless validly pre-empted), regulation effected by any administrative body of competent jurisdiction, or a final decree, judgment or decision by any court of competent jurisdiction. Cox and the City agree to

abide by all applicable law rules and regulation pertaining to non-regulated services prior to the implementation of a rate increase, including the provisions of Article _____ Section _____ of the current franchise Agreement.

4. FRANCHISE FEE: Cox agrees to pay the City a franchise fee of 5% of gross revenues received by Cox (as defined in the franchise) in calendar year 1984. Franchise fees paid to the City purporting to represent the appropriate fee for the second quarter of 1984 shall be supplemented to reach the amount of 5% within 30 days following the effective date of this Agreement. Effective January 1, 1985 the franchise fee shall be 3% of such gross revenues; PROVIDED, however, that nothing herein shall be construed to preclude the City from imposing a larger fee within the limitations of the franchise where permitted by law (as defined in Paragraph 3 hereof) including approval by the FCC of a "petition for special relief" or its equivalent; to avoid or restrict any other right of the City available under the franchise or in law (as defined in Paragraph 3 hereof). PROVIDED, further, that upon reasonable notice from the City to Cox at any time during the term of the franchise, Cox and the City shall jointly prepare such "petition for special relief" pursuant to FCC regulation. Both parties covenant to exercise their best effort to secure that relief; Cox further covenants that the payment of a fee in an amount not to exceed 5% of gross revenues "will not interfere with the effectuation of federal regulatory goals in the field of cable television." Any petition so prepared shall not be filed with the FCC except by the City.

5. SECURITY SERVICES: Cox shall not be obligated to provide cable security services as a condition of its franchise; PROVIDED, that Cox shall make available any necessary frequency space within the system to permit qualifying security companies an opportunity to provide such services under equal conditions as may be required by law. All gross revenues received by Cox from any security company using Cox facilities or personnel to provide security service shall be subject to the applicable franchise fee. All gross revenues received from any security company owned in whole or in part by Cox, its parent or any affiliate and doing business in the City of Omaha shall be subject to the applicable franchise fee.

6. SERVICE EXTENSION: Notwithstanding any provision of the franchise, Cox shall not be obligated to extend its services into any area meeting applicable density requirements, annexed by City subsequent to the effective date of the franchise grant and which is being provided with cable services (or in the case of past annexations was being provided with service at the time of annexation) from any duly authorized and franchised company other than Cox. PROVIDED that extension shall be required as a condition of franchise upon resolution by the Omaha City Council duly enacted following written petition of the residents within any such annexed area. Such petition shall contain signatures representing 51% of all dwelling units within the annexed area. No such resolution shall be acted upon by the Council within 120 days following receipt of such a petition by the City Clerk and submission to Cox.

7. COMMLINE SERVICES: Should the business currently known as COMMLINE cease operations in Omaha, Cox shall continue to operate and maintain the "B" cable system in a manner so that the "B" system shall be capable of providing (and Cox shall make available and so provide) all services required by the franchise for "B" cable.

8. CONVERTER DEPOSIT: Effective October 1, 1984, Cox shall be authorized to implement a fully refundable converter deposit which shall not be greater than 20% of the actual invoice cost of the converter to Cox -- which deposit shall not be less than \$25 nor more than \$40. The deposit shall be limited to newly-installed or re-installed customers for TIER II and TIER III services. (current deposit will be \$25. It is anticipated that the deposit shall remain at \$25 throughout calendar year 1985.)

9. INSTALLATION CHARGES: Effective October 1, 1984, installation charges for newly or re-installed TIER I single-family dwelling customer may be increased by Cox from \$25 to \$45 (representing the approximate actual cost of installation and the same amount currently charged in multi-dwelling units). Effective October 1, 1984 standard installation charges for newly and re-installed TIER II and TIER III customers may be increased by Cox from \$15 to \$25 (representing the approximate actual cost of installation).

10. LOCAL ORIGINATION: Cox shall provide not less than 10 hours of weekly non-repeat locally-produced programming and at least 7 hours of similar programming which may be obtained from other sources.

IN WITNESS WHEREOF, the parties hereto have executed Agreement as of the date first above written.

ATTEST:

CITY OF OMAHA, a Municipal Corporation,

By Mary Gallagher
City Clerk

By Michael Boyd 9/19/84
Mayor the City of Omaha

ATTEST:

COX CABLE OMAHA, INC.

By Carrolla

By Ronald V. Barrella

ATTEST:

COX CABLE COMMUNICATIONS, INC.

By Deborah J. Santoyo

By Gregory J. Hill
Vice President

APPROVED AS TO FORM:

Stacy
Assistant City Attorney

2012-2447-2210 ✓
ORDINANCE NO. 30457

AN ORDINANCE to amend existing franchise provisions related to cable television services between the City of Omaha and Cox Cable of Omaha, Inc.; to provide authority for mayoral execution; to provide for automatic invalidation of the Ordinance; to repeal all franchise provisions inconsistent therewith; and to provide the effective date hereof.

PRESENTED TO COUNCIL

AUG 21 1984 hearing 8-28-84
1st Reading _____

PUBLICATIONS

PUB'N. OF HEARING

Date 8-24-84
8-30- + 8-31-84

PUB'N. OF ORDINANCE

Date 9-21-84

AUG 28 1984 *motion to set the 2nd public hearing on 3rd reading on 9-11-84 & direct the city clerk to make a 2nd publication carried 6-0*
Final Reading SEP 11 1984

Passed 6-1 Conley - No

Mary Balligan Cornett



RECEIVED

91 SEP 26 PM 3:59

CITY OF OMAHA
OMAHA, NEBRASKA

City of Omaha
P. J. Morgan, Mayor
Law Department

Honorable President and
Members of the City Council,

Omaha/Douglas Civic Center
1819 Farnam Street, Suite 804
Omaha, Nebraska 68183-0804
(402) 444-5115

Telefax (402) 444-5125

Herbert M. Fitle
City Attorney

The attached ordinance is prepared at the request of Councilmember Takechi. The ordinance renews the franchise awarded to Cox Cable of Omaha, Inc., in 1980 to operate a cable television system within Omaha.

Cox's current franchise will expire on September 3, 1995, and Cox has filed an application and proposal for renewal of its franchise at this time. Federal law grants Cox the right to apply for renewal next September and permits renewal applications at any other time. Cox states that an early renewal will permit financing of a planned conversion of the cable system to fiber-optics technology. Additional information about Cox's request and plans is contained in its application and proposal.

If approved, the ordinance would extend Cox's franchise for an additional fifteen (15) years, continuing to September 3, 2010. Because Omaha Municipal Code section 19-415 currently restricts renewals of cable television franchises to an additional ten (10) years, an amendment of that code section to permit a fifteen (15) year renewal appears separately on your agenda. If both the renewal ordinance and the code amendment are passed, the code amendment will become effective one day prior to the ordinance renewing the franchise. If the ordinance amending the code is not adopted, this ordinance should be amended to limit the renewal to ten (10) years.

The renewal application and proposal have been reviewed by the Cable Television Advisory Committee and its franchise renewal subcommittee. Both the CTAC and its subcommittee recommend approval of the renewal request. Copies of the approving resolutions are attached.

Respectfully submitted,

Thomas O. Mumgaard
Assistant City Attorney

6119z



AGREEMENT BETWEEN THE CITY OF OMAHA AND
COX CABLE OF OMAHA, INC. TO RENEW
A FRANCHISE FOR A CABLE TELEVISION
SYSTEM WITHIN THE CITY OF OMAHA

THIS AGREEMENT, made and entered into this 22nd day of October, 1991, by and between the City of Omaha, a municipal corporation, hereinafter referred to as "City", and Cox Cable of Omaha, Inc., a Delaware corporation presently doing business at 11505 West Dodge Road, Omaha, Nebraska, hereinafter referred to as "Cox".

WHEREAS, by Ordinance No. 29254, adopted August 19, 1980, the City granted Cox a franchise to operate a cable communications system within the City, hereinafter referred to as the "franchise"; and,

WHEREAS, pursuant to the requirements of the Omaha Municipal Code, the City and Cox entered into an agreement executed by the City on September 4, 1980, and subsequently amended, to control and direct the operation of a cable communications system, hereinafter referred to as the "Franchise Agreement"; and,

WHEREAS, the franchise granted Cox expires on September 3, 1995; and,

WHEREAS, Cox has submitted an application and proposal for renewal of its franchise, hereinafter referred to as the "renewal application and proposal"; and,

WHEREAS, the City has found it to be in the best interests of the City and its residents to renew the franchise of Cox pursuant to the renewal application and proposal and according to the terms and provisions law, including the Omaha Municipal Code, as amended.

NOW, THEREFORE, IT IS AGREED BY AND BETWEEN THE PARTIES:

Section 1. RIGHTS. Cox shall be accorded the nonexclusive right and privilege to erect, construct, operate, and maintain in, upon, along, across, above, over and under the highways, sidewalks, easements, dedications, and other public property now in existence and as may be created or established during its term, any poles, wires, cable, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation of a cable communications system for the interception, sale, transmission and distribution of television programs and other audiovisual electrical signals, and the right to transmit the same within the City as it exists as of the date of the commencement of the renewal franchise term and as its corporate limits may from time to time be



changed; SUBJECT, however, to the terms and conditions of this Agreement and as otherwise provided by law.

Section 2. TERM. Unless otherwise terminated pursuant to the provisions of this Agreement or of law, the franchise shall be renewed and continue for a period of fifteen (15) years commencing on September 3, 1995.

Section 3. OBLIGATIONS. Cox shall, in compliance with all applicable provisions of law and this Agreement, provide each and every service required by law, including the Omaha Municipal Code, together with those services required by the Franchise Agreement, as amended, and the renewal application and proposal. Except as modified by the renewal application and proposal, all terms, conditions, representations, and obligations of the Franchise Agreement, as amended, shall continue during the renewal term and, to the extent not inconsistent with this Agreement or with the renewal application and proposal, the Franchise Agreement, as amended, and all documents incorporated therein are incorporated herein by reference and made a part of this Agreement. Further, the renewal application and proposal are hereby incorporated herein by reference and made a part of this Agreement.

Section 4. WAIVER OF NOTICE. Cox hereby waives and foregoes any and all notices or time limits applicable to the renewal application and proposal and the renewal of the franchise.

Section 5. SEVERABILITY. If any section, subsection, clause, phrase or portion of this Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

Section 6. CITY RECOURSE. Except as provided by law, the City shall not, by this renewal Agreement, be deemed to have waived any rights it may have related to any matter arising from the Franchise Agreement, as amended.

Section 7. AUDIT. Within six months after January 30, 1992, and during the same period of time following January 30th of the years 1997, 2002, 2007, and 2010 a comprehensive audit shall be performed to determine if Cox has paid to the City the full franchise fee for the previous calendar year. The audit shall be performed by an independent certified public accountant selected by the City after consultation with Cox. Cox's approval of the auditor shall not be required. All expenses and fees arising from the audit shall be paid by Cox. In the event the City determines that additional amounts are due, Cox shall pay said amounts within thirty days following written notice. Provided, that Cox may pay said amount under protest with the right to recompute the amount. The provisions of this section shall be in addition to and shall not

*AMENDED BY
DC #2372 OF
12/21/91 - gow*



supercede any provisions of the Franchise Agreement related to inspection of Cox's books and records or audit or recomputation of any amounts payable to the City."

THIS AGREEMENT is dated this 22 day of October, 1991.

Attest:

COX CABLE OF OMAHA, INC.

James A. Hatcher
Secretary
Cox Cable of Omaha, Inc.

Chris G. Hebb
Title: Vice President - General Manager

Attest:

CITY OF OMAHA, a municipal corporation

Bruce Brown
City Clerk
Deputy

P. J. Moran 10/24/91
Mayor of the City of Omaha

APPROVED AS TO FORM:

Thomas D. Mumpcaul
Assistant City Attorney



2286-2335-2391-2392-2393

ORDINANCE NO. 32508

AN ORDINANCE to renew the cable television franchise for the City of Omaha held by Cox Cable of Omaha, Inc.; to provide that such franchise shall be renewed for fifteen (15) additional years; to provide that such franchise shall be subject to compliance with law, including that of the Omaha Municipal Code, and performance of the provisions of the franchise renewal agreement attached hereto; to authorize the mayor and city clerk to execute and attest accordingly the filed agreement; and to provide the effective date hereof.

Cox
Cable
Agent

PUBLICATIONS

PUB'N. OF HEARING

Date 10-4-91

PUB'N. OF ORDINANCE

Date 11/1/91

32

PRESENTED TO COUNCIL

1st Reading OCT - 1 1991 Hearing
10/8/91

Hearing OCT - 8 1991 over to 10/22/91
pursuant to City Council Rule VII H.

Final Reading OCT 22 1991 #2391 Ordinance
read #2392 Amendment - motion to
approve Carried 6-0.

239B Passed as amended 6-0.
Mary Lulligan Cornett

CITY CLERK

Amended By Doc No.
947 of 4/5/94. (577)

AMENDMENT OF THE FRANCHISE AGREEMENT BETWEEN
THE CITY OF OMAHA AND COX CABLE OMAHA, INC.
(INTERCONNECT AGREEMENT)

THIS AGREEMENT is made and entered into this 14th day of April, 1994, by and between the City of Omaha, a municipal corporation, hereinafter referred to as "City", and Cox Cable of Omaha, Inc., a Delaware corporation presently doing business at 11505 West Dodge Road, Omaha, Nebraska, hereinafter referred to as "Cox", to amend the cable television franchise agreement currently in effect between the parties.

WHEREAS, by Ordinance No. 29254, adopted August 19, 1980, the City granted Cox a franchise to operate a cable communications system within the City, hereinafter referred to as "the franchise"; and,

WHEREAS, pursuant to the requirements of the Omaha Municipal Code and pertinent state law, the City and Cox entered into an agreement executed by the City on September 4, 1980, and subsequently amended, to control and direct the operation of a cable communications system, hereinafter referred to as "the franchise agreement"; and,

WHEREAS, the franchise agreement and pertinent Omaha City ordinances mandate performance by Cox of certain actions; and,

WHEREAS, both the City and Cox desire to amend certain provisions of the franchise agreement as expressed herein.

NOW, in consideration of the premises, it is agreed by and between the parties that the franchise agreement shall be amended as follows:

Section 1. INTERCONNECT. Cox agrees that it will interconnect its cable television system with the cable television system operated by T.V. Transmission, Inc., dba Douglas County CableVision, (hereinafter referred to as "CableVision") by use of a physical interconnection no later than December 31, 1994. After completion of the interconnection, Cox shall permit CableVision to receive via the interconnection and offer to its subscribers, in accordance

(L)

with the terms of this agreement, any public, community, and governmental access cable television programming that is approved by the City for transmission via the interconnection for delivery to residents of Omaha and unincorporated Douglas County to the extent actually carried by Douglas County CableVision and subscriber fees are paid.

(a) The interconnection shall utilize a method, a route, and cost allocations agreed upon by both Cox and CableVision. The cost of constructing the interconnection will be equally split between CableVision and Cox. Cox and CableVision shall be responsible for their own costs of maintaining the portion of the interconnect that is part of their respective systems. CableVision shall be responsible for maintaining any portion of the interconnect not identifiably part of either system, the costs of which shall be equally shared. CableVision will construct and manage the interconnection. Cox and CableVision will provide and pay for all equipment necessary at their respective head ends for the systems to transmit the approved programming through the interconnection.

Section 2. FRANCHISE FEE. No cost associated with the interconnection and the programming provided via the interconnection may be credited against or in any manner used to offset any franchise fee or other financial obligation owed to the City by Cox. In the event any court of competent jurisdiction or regulation by any federal or state agency or department modifies or invalidates the terms of this paragraph, the City retains the right to reasonably modify or terminate the obligations of this Agreement to carry out the full intent and purpose of this paragraph that no provision of this Agreement shall directly or indirectly diminish or reduce the revenue otherwise required by the franchise agreement to be paid by Cox to the City and Cox waives all rights to recover any amount previously paid as franchise fees to the City. All costs associated with the interconnection may be recoverable to the extent allowed under FCC external costs rules for rate calculations.

Section 3. INTERCONNECT FEE. The City may receive from CableVision and other operators of cable television systems an interconnection fee which shall be placed in a grant fund and, to the extent permitted by federal or state law, used only to promote or assist public, governmental, or community access programming. Cox agrees it shall have no claim to this fee and that the use of any moneys in this fund and the manner of its distribution shall be within the discretion of the Omaha City Council and be subject to the approval of the Omaha City Council. The subscriber access fees are not part of gross revenue for purposes of determining Cox's franchise fee payments. Upon reasonable request to the City Cox shall be entitled to receive an accounting of all receipts into this fund and expenditures of money from this fund. Cox agrees to allow the City access to all records necessary to properly calculate the appropriate fee and to cooperate in such calculation. Cox shall not be obligated to provide programming unless the per subscriber access fee has been paid for every subscriber receiving the programming. Cox further agrees that, for the purpose of determining the interconnect fee, the City may provide to CableVision information or documents the City receives from Cox for which Cox does not, in writing at the time the document or information is provided to the City, claim a proprietary right. The calculation of the fee shall be agreed upon by Cox, CableVision, and the City. If agreement cannot be reached after reasonable efforts, the fee shall be determined by the City. After its initial calculation, the fee shall be recalculated upon a written request to the City by Cox or CableVision; provided, however, that such a request may be made no more frequently than once every six calendar months.

Section 4. LOGOS & IDENTIFICATION. Cox agrees to allow CableVision to place its logo or identification on any programming received via the interconnection in addition to or in place of any logo or identification of Cox. The CableVision logo or identification shall be equal in size to that of Cox and shall be shown only when the logo or identification of Cox



appears in the programming. This subparagraph shall not apply to logos or identification used for on-screen credit for sponsorship of programming.

Section 5. PURPOSE. It is not the intent of this instrument to alter or otherwise affect any right or obligation of either party with respect to any matter not specifically set out herein. It is agreed that the franchise agreement shall be modified only as is set forth in this Agreement. Specifically, the obligations to provide programming via the interconnection imposed by this agreement shall not supercede any obligation to provide public, community, or governmental access programming imposed by the franchise agreement.

Section 6. SEVERABILITY. If any section, subsection, clause, phrase or portion of this Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

Section 7. CITY RECOURSE. Neither the City nor Cox shall, by this Agreement, be deemed to have waived any rights it may have related to any matter arising from the franchise agreement, as amended.

Section 8. EFFECTIVE DATE. This Agreement shall be effective from and after its execution by the City and shall remain in effect throughout the term of the franchise, unless mutually terminated by the parties or otherwise concluded in accordance with the provisions hereof or applicable law.

IN WITNESS WHEREOF, the foregoing Agreement is dated this 5th day of June, 1994.



Vice President/General Manager
Cox Cable Omaha, Inc.

ATTEST:

Mary Kelly Barnes

CITY OF OMAHA, a Municipal Corporation,

BY J. L. Morgan 4/7/94
MAYOR OF THE CITY OF OMAHA

APPROVED AS TO FORM:

Howard D. Thompson
ASSISTANT CITY ATTORNEY

0345B





City of Omaha
Hal Daub, Mayor

Law Department

Omaha/Douglas Civic Center
1819 Farnam Street, Suite 804
Omaha, Nebraska 68183-0804
(402) 444-5115
Telefax (402) 444-5125

Herbert M. Fidle
City Attorney

Honorable President

and Members of the City Council,

The attached ordinance is prepared at the request of Councilmember Koneck, Chairman of the City Council Cable Television Committee. The ordinance grants Cox Communications a one year extension of its franchise term to reward superior technical service and responsible programming.

This is the first use of Omaha Code section 19-424, which creates an incentive "to encourage the grantee in its operation of a cable television system" by providing a "reward [for] superior technical service and responsible programming." After Cox Communications sought this reward, their performance was reviewed by the Cable Television Advisory Committee and the Council Cable Television Committee. Both Committees recommend granting Cox's request.

Respectfully submitted,

Thomas O. Mumgaard
Assistant City Attorney

P:\LAW\5258.SAP



ORDINANCE NO. _____

AN ORDINANCE pursuant to Omaha Municipal Code section 19-424 to reward superior technical service and responsible programming by CoxCom, Inc., dba Cox Communications, by extending its cable television franchise term by one year, to amend the cable television franchise agreement accordingly; and to provide an effective date.

WHEREAS, Omaha Municipal Code section 19-424 provides that the City Council may, in its sole and absolute discretion, award a cable television franchisee an extension of one year upon its current franchise term to reward superior technical service and responsible programming; and,

WHEREAS, CoxCom, Inc., dba Cox Communications, holds a cable television franchise with the City of Omaha which will expire September 3, 2010 and has requested award of the one-year incentive extension upon that term (a copy of which is attached) and has provided supporting information; and,

WHEREAS, the Omaha Cable Television Advisory Committee has reviewed the request and voted to recommend that this City Council grant Cox Communications' request for a one-year extension upon the franchise term.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OMAHA:

Section 1. This City Council hereby concludes that CoxCom, Inc., dba Cox Communications, offers superior technical proficiency and quality programming so as to deserve reward by extending its franchise term for one additional year.

Section 2. Pursuant to Omaha Municipal Code section 19-424, the Cable Television Franchise Agreement between Cox Cable of Omaha, Inc., and subsequently assigned to CoxCom,

ORDINANCE NO. _____
PAGE -2-

Inc., is hereby amended to extend the Agreement's term from September 3, 2010, to September 3, 2011.

Section 3. This Ordinance shall be in effect and in full force fifteen days from and after the date of its passage.

INTRODUCED BY COUNCILMEMBER

APPROVED BY:

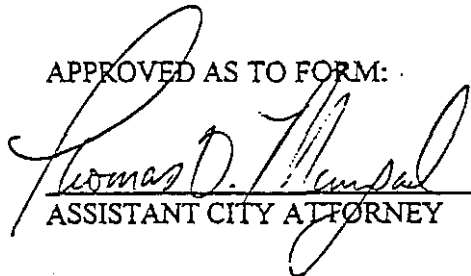
MAYOR OF THE CITY OF OMAHA DATE

PASSED _____

ATTEST:

CITY CLERK OF THE CITY OF OMAHA DATE

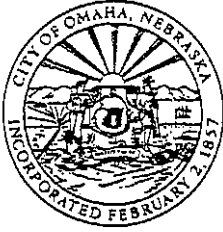
APPROVED AS TO FORM:



ASSISTANT CITY ATTORNEY 7-15-97
DATE

PLAWS259.SAP

Ⓛ



City of Omaha
Hal Daub, Mayor

Law Department

Omaha/Douglas Civic Center
1819 Farnam Street, Suite 804
Omaha, Nebraska 68183-0804
(402) 444-5115
Telefax (402) 444-5125

Paul D. Kratz
City Attorney

Honorable President

and Members of the City Council,

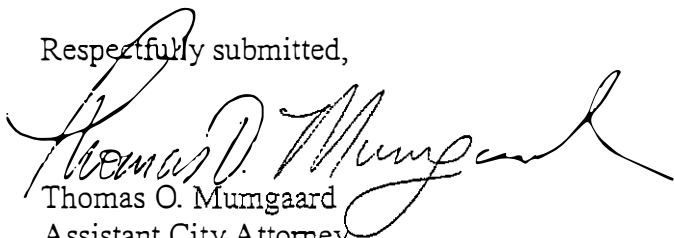
The attached Resolution is prepared at the request of Councilmember Brown, Chairman of the City Council Law Committee. The Resolution gives the Council's consent to Cox Communications moving its access studio from the Center Mall to the Cox facilities at 115th and West Dodge Road.

The original cable television franchise required Cox to operate three studios for use by persons who produce their own cable television programming. In 1996, two of these studios were consolidated at the Center Mall at 42nd and Center Streets. Cox now asks to relocate that consolidated location to 11505 West Dodge Road, where its offices are located. Cox represents that the new, combined studio will provide increased service to the users of access channels and will allow upgrading of equipment and studio facilities. Additional information is provided in the documents attached to the Resolution.

Cox agrees that the City Council retains the right to require that one additional studio location be created in the future if the reasonable needs of access users require it.

The Omaha Cable Television Advisory Committee recommends approval of this resolution.

Respectfully submitted,



Thomas O. Mumgaard
Assistant City Attorney

P:\Law1\1246sap.doc

CITY OF OMAHA

LEGISLATIVE CHAMBER

Omaha, Nebr.....

RESOLVED BY THE CITY COUNCIL OF THE CITY OF OMAHA:

WHEREAS, Cox Communications Omaha, LLC, (Cox) is operating a cable television system within the city pursuant to a franchise granted May 18, 1982, and subsequently extended; and,

WHEREAS, the franchise agreement between the City and Cox, as amended, provides that Cox must provide an access studio for use by the public at a location designated in the Center Mall at 42nd Street and Center Street; and,

WHEREAS, Cox, has requested the City's permission to relocate that access studio to 11505 West Dodge Road as more fully explained in the attached letter and minutes of the Omaha Cable Television Advisory Committee (CTAC); and,

WHEREAS, CTAC has determined that it is in the best interests of the citizens of Omaha to consent to the relocation and recommends such consent by this City Council, as shown in the attached meeting minutes; and,

WHEREAS, this City Council finds that the recommendation of CTAC should be adopted and relocation should be permitted subject to certain conditions and representations.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF OMAHA:

THAT, consent is hereby given to Cox Communications Omaha, LLC, to relocate the access studio it operates at the Center Mall, 42nd and Center Street, to the Cox Communications Omaha, LLC, facility at 11505 West Dodge Road.

BE IT FURTHER RESOLVED:

THAT this consent is subject to continued compliance with the representations in the attached Statement of Conditions and all pertinent provisions of the franchise agreement, as amended.

P:\Law\11247sap.doc

APPROVED AS TO FORM:

Thomas D. Mansfield 12-6-00
CITY ATTORNEY DATE

By..... Councilmember

Adopted..... 12/19/00

..... City Clerk

Approved..... Mayor

Resolution # 3411

STATEMENT OF CONDITIONS

This Statement Of Conditions is provided by Cox Communications Omaha, LLC, (Cox), for the purpose of identifying the conditions and representations under which the Omaha City Council grants its approval to relocate Cox's cable television access studios to 11505 West Dodge Road (hereinafter referred to as "the new location").

Cox, or its successor franchisee, will provide the following no later than October 1, 2001:

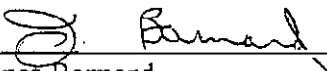
1. The new location will have no fewer than two separate studios and two separate editing suites, on-site storage for sets and props, and ample space for equipment training purposes. The studios and editing suites will be no smaller than the studios and editing suites at the Center Mall studios at the time the new location is approved by the City Council.
2. All studio videotaping equipment at the new location will be of a digital format that is state of the art at the time the new location is approved by the City Council. The studios at the new location will be equipped with no fewer cameras than are provided at the Center Mall studios at the time the new location is approved by the City Council.
3. All editing suites at the new location will have computer-based editing equipment in a digital format that is state of the art at the time the new location is approved by the City Council.
4. All videotaping studios at the new location will have studio curtains of a quality equal to or better than curtains used by the Omaha over-the-air television broadcast stations.
5. All videotaping studios at the new location will have studio lighting of a quality equal to or better than the studio lighting used by the Omaha over-the-air television broadcast stations.
6. Well-lit parking for users of the access studios will be provided at the new location.

Cox, on behalf of itself and its successors, agrees that upon the direction of the City Council it will promptly establish one additional access studio in an area of the City designated by the City Council. The City Council's direction and designation shall be based upon the reasonable needs of cable television subscribers and access users within the City of Omaha.

Cox, on behalf of itself and its successors, further agrees that upon approval of the new location by the City Council, the terms of this Statement of Conditions shall be incorporated

into and become a part of its Omaha cable television franchise agreement and that failure to comply with the terms of this Statement of Conditions shall be considered a material breach of that franchise agreement.

Dated this 4th day of December, 2000.



Janet Barnard
General Manager



City of Omaha
Mike Fahey, Mayor

Honorable President

and Members of the City Council,

The attached ordinance is drafted at the request of Council President Welch, responding to a request by Cox Communications, LLC, (Cox) the City's primary cable television franchisee. The proposed ordinance approves an Addendum to Omaha's cable television franchise agreement with Cox.

The Addendum alters the manner in which public, educational, and governmental (PEG) programming is offered on the Cox cable television system. Since 1980 when the cable franchise was granted, Cox has designated six channels for this purpose. PEG programming in Omaha has been divided into two types of users: (a) individual public access users who produce their own programs on a regular or irregular basis, and (b) groups with a common interest, commonly called a consortium, which are assigned a channel and given regularly scheduled blocks of time for their programs. Individual public access programming is currently shown on channel 23 along with governmental programming while the consortia have five channels dedicated to their use.

Cox proposes amending the franchise agreement to reduce the number of dedicated access channels to three channels, to revamp the existing consortium policies, and to formally recognize Independent Television Omaha as a new consortium. If this Addendum is approved, City staff and Cox will develop a methodology to consolidate the access programming onto the three channels. Cox could then use the other three channels for other uses. General guidelines are provided for what must be included in the methodology. Two of the channels will be designated principally for programming of the Educational Consortium, as they are currently used. The third channel will be designated principally for use by the other consortia and independent users. The rules and procedures that are currently in place to govern consortia programming will be reviewed by Cox and the City and altered as necessary to accommodate the changes in channel use. Cox commits to running public service announcements on the cable television system to inform viewers of the consolidation. Cox will continue to operate a production studio and provide equipment for use by individuals creating their public access programs.

Law Department

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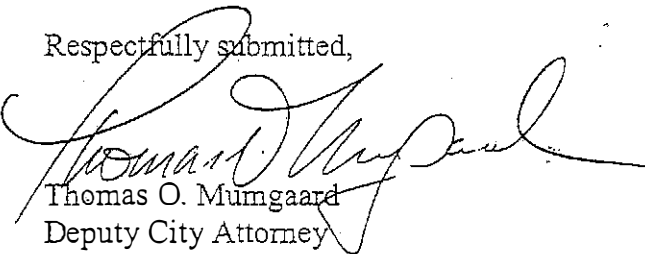
Paul D. Kratz
City Attorney

Honorable President
and Members of the City Council
Page -2-

The Addendum requires Cox to upgrade the cable television system to increase its capacity by the end of 2009. The upgrade, together with this consolidation of public access channels, will allow Cox to offer additional channels to its subscribers, including additional high definition channels. In addition, Cox will spend up to \$90,000.00 to connect cable television at City of Omaha facilities that currently can't receive service without the City paying the installation costs. Also, Cox agrees to assist the City in a one-year trial of a wireless internet network with up to three sites chosen by the City where wireless internet connection will be available to the public. Cox will pay the cost of establishing the network and, if the City chooses not to establish this trial network, Cox will donate to the City \$75,000.00 to be used to improve PEG programming opportunities.

The Cox cable television franchise expires in September 2011, and the Addendum provides that the return of the three public access channels may be a condition of renewal at that time if there is a showing of unmet public access need.

Respectfully submitted,



Thomas O. Mumgaard
Deputy City Attorney

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*Amended by Ord. No. 553
of 5/15/07 (SM)*

ADDENDUM TO THE AGREEMENT BETWEEN
THE CITY OF OMAHA AND COX COMMUNICATIONS OMAHA, L.L.C.
TO CONSTRUCT AND OPERATE A CABLE TELEVISION SYSTEM IN
THE CITY OF OMAHA

THIS ADDENDUM TO THE CABLE TELEVISION FRANCHISE AGREEMENT (Addendum) dated May 15, 2007 is entered into by and between the CITY OF OMAHA, a municipal corporation (City) and COX COMMUNICATIONS OMAHA, L.L.C., a Delaware limited liability company (Cox).

WHEREAS, in response to an application submitted by Cox (Application), by Ordinance No. 29254, adopted August 19, 1980, the City granted the predecessor corporation of Cox a franchise (the Franchise) to operate a cable communications system (the System) within the City; and

WHEREAS, pursuant to the requirements of the Omaha Municipal Code, the City and Cox entered into an agreement executed by the City on September 4, 1980, and subsequently amended, to control and direct the operation of a cable communications system (collectively, the "Franchise Agreement"); and

WHEREAS, pursuant to proposals and applications submitted to the City in 1991 and 1997 (Extension Applications), Cox has received extensions of the Franchise until September 3, 2011, which was documented between the parties by written agreements (Extension Agreements); and

WHEREAS, during the operation of the cable communications system issues have arisen regarding Cox's obligations to provide public, educational and government access channels (PEG channels); and

WHEREAS, Cox wishes to pursue increased programming options made possible by new technological advances and represents to the City that pursuing those options requires the availability of additional bandwidth within its System; and

WHEREAS, the City acknowledges and agrees that the implementation of these increased programming options, specifically digital and high definition channels, is advantageous to its residents and financially beneficial to the City and to Cox.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual promises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Cox hereby agree as follows:

1. **Recitals.** The parties hereto hereby ratify each of the foregoing recitals and incorporate same as a material part hereof.

2. **Potential Contradiction.** Notwithstanding any provision contained in the Application, Franchise Agreement, Extension Application or Extension Agreements (collectively, Agreements) to the contrary, it is hereby agreed by the parties hereto that this Addendum amends, supplements and supersedes any such contradictory provisions of the Agreements to the extent applicable. It is not the intent of the parties to alter or amend any rights or obligations of either party with respect to any matter not set out herein or not contradictory to the provisions set out herein.

3. **System Upgrade.** Cox shall upgrade the bandwidth available on the System to provide at least a 100 MHz increase and install capacity such that the System can be expanded at least an additional 100 MHz in the future, which upgrade shall be completed on or before December 31, 2009 (Upgrade) unless delayed due to events beyond Cox's control. Cox shall use its best efforts to ensure that the Upgrade results in higher efficiency and capability for cable programming within the System in order that the City and its citizens can benefit therefrom as future technological advancements are made.

4. **Community Access Consortia.**

4.1 **Current Recognition.** The parties shall continue to recognize those community access consortia which have previously been operating on the System and wish to continue with said recognition, namely the Education Consortium, Community Telecast, Inc. (CTI), the Health & Wellness Consortium, and the Religious Consortium. In addition, the parties henceforth recognize Independent Television Omaha (ITO) as a community access consortium.

4.2 **Governance.** Cox and the City agree that the rules and procedures governing community access consortia which were expressed in the Community Access Policies and Procedures and/or Community Programming Agreement of 2000 (Procedures) are in need of revision. Accordingly, the parties shall diligently work to revise and update the Procedures as quickly as possible and with due consideration of the Conversion Date (as hereinafter defined) so that the Procedures accurately reflect the current operations of the consortia, provide Cox and the City with appropriate information thereon, and require the production of appropriate amounts of local programming by any consortium seeking to use the System. Once the Procedures have been revised and updated they shall be subject to approval by the City acting through its Cable Television Advisory Committee (CTAC).

4.3 **Future Recognition.** Pursuant to Section 4.2 hereof, if applicable, recognition of additional consortiums in the future shall be determined solely in accordance with the Procedures.

5. **PEG Channels.**

5.1 **Number & Lineup.** The City and Cox agree that commencing 90 days after the effective date of this Addendum (the Conversion Date) Cox must devote no more than three analog channels and one digital channel on the System to non-commercial PEG programming, which channels shall consist of:

First Analog Channel - Education Consortium & Governmental Access

Second Analog Channel - Education Consortium & Governmental Access

Third Analog Channel - CTI

Digital Channel - Independent Users, ITO, H&W, & RC. The digital channel must be placed on the digital basic service tier.

5.2 **Publicity.** Pursuant to Section 5.1, to announce the consolidation of PEG channels to the public Cox shall run 200 public service announcements per month at a value of at least \$60,000 on its System at varying times per month for one year from the effective date hereof.

5.3 **Review of Channel Use.** At any time Cox seeks renewal of the Franchise or extension of its terms, the provisions of this Section 5 will be subject to review at the City's option to determine if sufficient channel space is being provided to meet the public, community, educational, and governmental access programming needs of the citizens of Omaha. Cox and the City agree that, upon a showing of an unmet need, designation of up to an additional three channels for public access use may be a condition of renewal or extension of the Franchise.

6. **PEG Channel Programming.** Prior to the Conversion Date, the City and Cox shall work cooperatively and expeditiously to develop a methodology by which current PEG channel programming can be consolidated onto three analog channels and one digital channel in a manner which is fair to all existing consortiums ("Methodology") and consistent with paragraph 5.1, herein. To that end, the Methodology shall be governed by the following principles:

- Locally focused content will be given "preferred" time slots (i.e., 5:00 p.m. to 10:00 p.m. weekdays, 9:00 a.m. to 10:00 p.m. weekends).
- Time slots may be rotated or adjusted to ensure fairness to all.

- Failure to comply with the Procedures will be a factor in determining time slots.
- Original programming will take priority over repeat programming.
- Original "one time" programming will take priority over a program which regularly repeats.
- Original government programming will take priority over public access or consortium programming.
- Governmental access programming can be broadcast on any of the three PEG channels but will be placed on a consistent basis as determined by the City on one of the two channels dedicated for use by the Education Consortium.
- Due to it being newly formed, ITO shall be given a six month period from the first showing of its programming during which the local programming requirements imposed upon it shall be reduced.
- At least 75% of a consortia's programming must be both locally produced and less than eighteen months old.

Once the Methodology is agreed upon, same shall be fairly administered among all producers of PEG channel programming. To that end, if a public access user does not believe the Methodology is being applied correctly, it may request that Cox investigate the matter further (a "Request"). Upon receipt of a Request, Cox shall send a copy of the Request to CTAC, investigate the facts applicable thereto and present a report to CTAC stating the manner in which the Methodology is being applied, summarizing the investigation, and providing Cox's proposed response to the Request ("Report"). Thereafter, CTAC shall consider the Report and determine what action, if any, shall be taken to resolve such issue, which Cox will then assist CTAC in implementing.

7. Additional Cox Commitments.

7.1 Connection of City Facilities. Within 6 months of the effective date of this Addendum Cox shall spend up to \$90,000.00 to connect multiple City facilities to the System which do not currently meet the density requirements under the Agreements to compel a mandatory connection. Subject to the overall limitation on total expense, the facilities to be connected shall be determined solely by the City; provided, however, that if Cox determines the total number of facilities designated by the City for connection shall result in connection expense exceeding the total limit agreed herein, then Cox shall give the City notice of same and adequate opportunity to revise its designations or to pay the additional expense.

7.2 **Wi-Fi Trial.** For a period of eighteen (18) months from the date hereof, the City shall have the option to elect to partner with Cox to design, create and operate three trial Wi-Fi “hot spots” within areas served by the System within the City limits (“Hot Spots”), which Hot Spots will be installed at Cox’s sole expense. The City and Cox agree to work together to assure that the location of the Hot Spots do not significantly cannibalize current or potential Cox customers and also agree that Cox will not be required to provide any customer service or support for the Hot Spots. If said election is made by the City, once agreements are mutually reached regarding the technical aspects thereof (speed, number of permitted users) and same are installed, the Hot Spots will be operated and maintained by Cox for a one year period after which the parties will evaluate the continued utility thereof. If continued operation of the Hot Spots is mutually agreed upon, same will be documented by separate agreement.

7.3 **Donation as Alternative.** In the event the City elects not to engage in the installation of Hot Spots pursuant to Section 7.2 hereof, Cox shall, at the time of the election, instead donate \$75,000 to be used to either buy equipment and/or facilitate the operation of the PEG channels.

7.4 **Evaluation of Other Technologies.** If requested by the City, Cox agrees to help evaluate and, if viable, provide advice on the usage of “new technology” by PEG channel content producers, such as blogs and web video, in lieu of utilizing PEG channels.

8. **City Recourse.** Except as provided by law or otherwise set forth herein, the City shall not, by this Addendum, be deemed to have waived any rights it may have related to any matter arising from the Agreements.

9. **Severability.** If any section, subsection, clause, phrase or portion of this Addendum is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

10. **Current Practice.** Subject to this Addendum, to the extent that the terms of the Agreements differ from Cox's current operations in regard to PEG channels and/or public access, both parties waive any claim either may have against the other to assert a default or claim damages in regard to PEG channels or the equipment previously or currently provided in regard thereto.

11. **EWTN.** The Eternal Word Television Network (EWTN) shall be carried on an analog channel on the basic service tier.

IN WITNESS WHEREOF, the parties have caused this Addendum to be duly executed effective as of the date hereof.

CITY OF OMAHA, NEBRASKA,

By: Mike Jahay 5/17/07
Mayor

ATTEST:

[Signature] 5/17/07
Witness

COX COMMUNICATIONS OMAHA, L.L.C.

By: [Signature]
Kristin Peck

Name printed or typed

Title: Vice President, Government Affairs

ATTEST:

[Signature]
Witness

APPROVED AS TO FORM:

[Signature] 5-16-07
DEPUTY CITY ATTORNEY DATE