



City of Omaha  
Jim Suttle, Mayor

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**Paul D. Kratz**  
City Attorney

Honorable President

and Members of the City Council,

The attached Ordinance is submitted by the Law Department.

The Ordinance approves a franchise agreement that renews the City's cable television franchise held by Cox Communications Omaha, LLC. This agreement is the result of three years of review and negotiations. In 2008 Cox exercised its rights granted by federal law and requested renewal. You retained a consultant and initiated the federally-directed process of developing a report assessing the community's cable-related needs and interests. That report was formally adopted in April, 2010. Informal negotiations with Cox began soon thereafter to reach an agreement that meets those needs and interests and this agreement is the product of those negotiations. It is the first comprehensive revision of the cable television franchise agreement since the franchise was awarded in 1981.

The renewal franchise agreement provides, in part:

- The franchise is extended for an additional ten years from its approval.
- Cox continues to pay a 5% franchise fee based on gross revenue, the maximum rate allowed by federal law.
- The agreement is non-exclusive and continues to require city-wide coverage.
- The public, educational, and governmental (PEG) programming system is restructured. Groups that have previously been recognized as consortiums with dedicated channels will no longer be recognized in the franchise agreement. PEG channel assignment will be made separate from the contract using a process that will be developed in the future. For six months Cox will continue to operate PEG as it now does. Thereafter it will no longer provide any production facility or employees; a new studio facility must be found and a new organizational structure must be created. During this transition period the City must decide how PEG programming will be produced and supervised and a proposal will be presented for Council approval. At the end of the period the channels used for PEG will be reduced from four to three, with one in the digital format (channels 18, 22, and 109 are expected to remain as PEG channels). Cox agrees to pay a total of \$2 million for PEG support over the next 8 years with \$800,000 paid through 2014. The City will decide how this funding is used but it can be used only on PEG support.

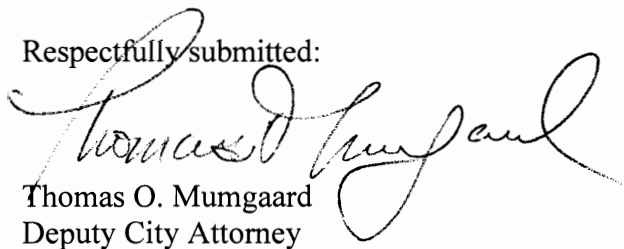
Honorable President  
and Members of the City Council  
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- Complimentary service to public buildings (City, County, Schools) continues with a distinction made between the level of complimentary service to existing locations and new locations.
- Under federal law the City currently has no authority to regulate Cox's rates and the company's rates have not been and cannot be a subject of these negotiations.

The franchise agreement under which CenturyLink is operating will be negotiated after the Cox agreement is approved.

We currently face a deadline of May 19, 2012, to either approve a Cox franchise renewal agreement or begin the administrative review of the formal proposal previously submitted by Cox. If adopted, this Ordinance will remove that formal proposal from consideration. If this franchise agreement is not acceptable, a resolution either starting the formal renewal process or extending informal negotiations must be adopted before that deadline.

Respectfully submitted:

A handwritten signature in black ink, appearing to read "Thomas O. Mumgaard", is written over the typed name and title.

Thomas O. Mumgaard  
Deputy City Attorney

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

1 AN ORDINANCE to renew the cable television franchise now held by Cox Communications  
2 Omaha, LLC; to provide that such franchise shall be renewed for ten (10) additional  
3 years; to provide that such franchise shall be subject to compliance with law, Municipal  
4 Code, and performance of the provisions of the franchise agreement attached hereto; to  
5 approve the franchise agreement authorizing the Mayor and City Clerk to execute and  
6 attest accordingly the filed agreement; and to provide the effective date hereof.

7 WHEREAS, by Ordinance No. 29254, adopted on August 19, 1980, the City Council of  
8 the City of Omaha granted a franchise for a cable communications system for the City of Omaha  
9 to Cox Cable of Omaha, Inc. ("Cox Franchise"), which franchise was later assumed by Cox  
10 Communications Omaha, LLC, ("Cox"); and

11 WHEREAS, pursuant to the Cox Franchise, Cox continues to operate a cable  
12 communications system within the City of Omaha; and

13 WHEREAS, the term of the Cox Franchise has been extended by mutual agreement to  
14 May 19, 2012; and

15 WHEREAS, the provisions of Omaha Municipal Code section 19-415 and 47 U.S.C.  
16 § 546 authorize the City Council to renew the Cox Franchise; and

17 WHEREAS, this City Council finds that it is in the best interests of the City that the Cox  
18 Franchise be renewed for a term of ten (10) years.

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

20 Section 1. That the Cox Franchise is hereby renewed for a period of ten (10) years  
21 commencing on the passage of this ordinance, subject to compliance with the law, including the

1 Omaha Municipal Code, and the terms and conditions of the Franchise Agreement attached  
2 hereto.

3 Section 2. That the attached Franchise Agreement between Cox and the City is hereby  
4 approved and the Mayor and City Clerk are authorized to execute and attest, respectively, that  
5 Franchise Agreement.

6 Section 3. Cox's August 19, 2011, Formal Proposal, submitted in accordance with 47  
7 U.S.C. § 546(c) for renewal of the Cox Franchise, is neither granted nor denied but is superseded  
8 by the attached Franchise Agreement.

9 Section 4. This ordinance shall be in effect and in full force fifteen days from and after  
10 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:

  
\_\_\_\_\_  
DEPUTY CITY ATTORNEY DATE 4-19-12

**CITY OF OMAHA**

**COX COMMUNICATIONS**

**CABLE FRANCHISE AGREEMENT**

*2012*

**Historical reference documents between Omaha and Cox governing the provision of  
cable services in the City**

1. Original 15-year contract; September 4, 1980
2. Addendum "A" re various issues; August 23, 2983
3. Amendment re rate regulation, franchise fee, service extension - 9/ 11/84
4. Amendment renewing through 9/3/10 - 10/22/91
5. Amendment requiring interconnection with other systems - 4/5/94
6. Amendment granting performance extension through 9/3/11 - 7/15/97
7. Resolution granting consent to moving the access studio - 12/19/00
8. Amendment altering PEG access requirements- 5/15/07

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## **AGREEMENT**

THIS AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2012, by and between the CITY OF OMAHA, a Municipal Corporation, hereinafter referred to as "City", and Cox Communications Omaha, LLC., a Delaware limited liability corporation with a local business office at 11505 W. Dodge Rd., Omaha, Nebraska, hereinafter referred to as "Company".

WITNESS THAT:

WHEREAS, on or about September 4, 1980 the City entered into an Agreement granting Company a cable television franchise ("Franchise"); and

WHEREAS, pursuant to Article XII, § 19-393 et seq. of the Omaha Municipal Code and in accordance with Section 546 of the Cable Communications Policy Act of 1984, as amended, (Pub. L. No. 98-549, 98 Stat. 2779 (codified at 47 U.S.C. § 521 et seq. hereinafter "Cable Act") Company has requested renewal of its Franchise in the City; and

WHEREAS, the City is authorized to grant one or more nonexclusive cable franchises pursuant to Article XII, § 19-393 et seq. of the Omaha Municipal Code and applicable state and federal law; and

WHEREAS, the City intends to exercise the full scope of its municipal powers to the extent not prohibited by state and federal law, including both its police power and contracting authority, to promote the public interest and to protect the health, safety and welfare of the citizens of the City; and

WHEREAS, the City has identified the future cable-related needs and interests of the City and its community, has considered the financial, technical and legal qualifications of the Company, and has determined that the Company's plans for its Cable System are adequate, in a full public proceeding affording due process to all parties; and

WHEREAS, the City has found Company to be financially, technically and legally qualified to operate the Cable System; and

WHEREAS, the City has determined that the grant of a nonexclusive franchise to Company is consistent with the public interest; and

WHEREAS, the City and Company have reached agreement on the terms and conditions set forth herein and the parties have agreed to be bound by those terms and conditions.

NOW, THEREFORE, IN CONSIDERATION of the renewal of the Franchise the City and Company hereby agrees to comply with the provisions of this Agreement and Article XII, § 19-393 et seq. of the Omaha Municipal Code as follows:

## **ARTICLE I. GENERAL**

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) "Advisory Committee" means the Omaha Cable Television Advisory Committee (aka CTAC) which shall advise the City Council on matters related to cable television as set forth in the Omaha Municipal Code Chapter 19, Article XII, Section 19-393.

(b) "Applicable Laws" means any law, statute, charter, ordinance, rule, regulation, code, license, certificate, franchise, permit, writ, ruling, award, executive order, directive, requirement, injunction (whether temporary, preliminary or permanent), judgment, decree or other order issued, executed, entered or deemed applicable by any governmental authority of competent jurisdiction.

(c) "Basic Service" means any service tier which includes the lawful retransmission of local television broadcast signals and any public, educational and governmental ("PEG") access programming.

(d) "Cable Act" means the Cable Communications Policy Act of 1984, as amended by the Cable Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996, as the same may be amended from time to time.

(e) "Cable Service" or "Service" means the one-way transmission to Subscribers of Video Programming or Other Programming Service and Subscriber interaction, if any, which is required for the selection or use of such Video Programming or Other Programming Service.

(f) "Cable Communication System" or "Cable System" means a facility, consisting of closed transmission paths and associated signal generation, reception, and control equipment that is designated to provide Cable Service which includes Video Programming and which is provided to multiple Subscribers within a community, but such term does not include (1) a facility that serves only to retransmit the television signals of one (1) or more television broadcast stations; (2) a facility that serves Subscribers without using any public Right-of-Ways; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Subchapter II of the Cable Act, except that such facility shall be considered a Cable System (other than for purposes of Section 541(c) of the Cable Act) to the extent such facility is used in the transmission of Video Programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand service; (4) an open video system that complies with Section 573 of the Cable Act; or (5) any facilities of an electric utility used solely for operating its electric system.

(g) "Channel" shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(4), meaning a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel, as defined by the Federal Communications Commission by regulation.

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

(i) "City Council" means the governing body of the City of Omaha, Nebraska.

(j) "Company" is Cox Communications Omaha, LLC, and its lawful and permitted successors, assigns and transferees.

(k) "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.

(l) "Day" unless otherwise specified shall mean a calendar day.

(m) "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 Cable System, its structures or equipment.

(n) "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 Cable System, its structures or equipment.

(o) "Existing System" means the entirety of the Cable System of Company which is installed and currently operational within the City as of the date hereof.

(p) "Expanded Basic Service" refers to the next tier of service above the Basic Service tier excluding premium or pay-per-view services.

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

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

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

- (1) revenue derived from any tier of Cable Service;
- (2) revenue derived from optional premium Cable Services;
- (3) revenue derived from Pay Television Cable Service;

- (4) revenue derived from Installation, disconnection, reconnection and changes-in-service;
- (5) late fees;
- (6) Franchise Fees;
- (7) revenue derived from leased Channel fees for commercial leased access programming and services;
- (8) Converter rentals;
- (9) studio rental, production equipment and personnel fees,
- (10) advertising revenues from the provision of Cable Services over the Cable System
- (11) revenues from program guides and electronic guides;
- (12) revenues from home shopping, and other revenue-sharing arrangements;
- (13) additional outlet fees; and
- (14) all revenues derived from any ancillary services related to the provision of Cable Service pursuant to this Franchise.
- (15) revenue received by any entity other than the Company where necessary to prevent evasion or avoidance of the obligation under this Franchise to pay the Franchise Fees.
- (16) "Gross Revenues" shall not include:
  - (i) bad debt.
  - (ii) any taxes on services furnished by the Company which are imposed directly on any Subscriber or user by the State, City or other governmental unit and which are collected by the Company on behalf of said governmental unit. The Franchise Fee is not such a tax.
  - (iii) revenue from or fees for any services other than Cable Services or from services that are not provided to Subscribers via the Cable System.
- (17) The parties intend for the definition of Gross Revenues to be as inclusive as possible consistent with existing Applicable Law. If there is a change in federal law subsequent to the Effective Date of this Franchise, such change shall not impact this

Gross Revenues definition unless the change specifically preempts the affected portion of the definition above.

(t) "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.

(u) "Installation" shall mean the connection of the Cable System from a feeder cable to a Subscribers' residence or place of business.

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

(w) "Normal Operating Conditions" means those Service conditions which are within the control of Company. Those conditions which are not within the control of Company include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of Company include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System.

(x) "Other Programming Service" means information that a cable operator makes available to all Subscribers generally.

(y) "Pay Television" means the delivery over the System of pay-per-Channel or pay-per-program Cable Service to Subscribers for a fee or charge, in addition to the charge for Basic Service or Other Programming Services.

(z) "PEG" means public, educational and governmental.

(aa) "Person" means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for profit, but shall not mean the City.

(bb) "Public Property" is any real property owned by the City other than a Highway, Sidewalk, Easement or Dedication.

(cc) "Right-of-Ways" means all Highways, Sidewalks, Easements, Dedications and other Public Property in the City.

(dd) "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.

(ee) "Street" shall mean and include public Streets, avenues, boulevards, Highways, roads, alleys, lanes, viaducts, bridges, public ways and approaches thereto and other public thoroughfares in the City devoted to public use.

(ff) "Subscriber" or "Customer" means any Person, public building or governmental entity within the City that is authorized to receive service provided by Company by means of the Cable System; provided, however, that Company recognizes the right and ability of any authorized lessee or tenant of a Subscriber to request the fulfillment of certain customer service obligations of Company set forth herein.

(gg) "Video Programming" means programming provided by, or generally considered comparable to programming provided by a television broadcast station.

## Section 2. **GRANT OF FRANCHISE.**

(a) The City hereby grants to Company a non-exclusive Franchise authorizing Company to erect, construct, operate and maintain in, upon, along, across, above, over and under the Right-of-Ways now in existence and as may be created or established during its term, any poles, wires, cable, underground conduits, manholes, and other fixtures necessary for the maintenance and operation of a Cable System for the provision of Cable Services in the City.

(b) The Company will not at any time during the term of this Agreement, or any extended term, challenge or attempt to challenge in any claim or proceeding any condition or term of this Agreement or otherwise contend the same to be unreasonable, arbitrary or void or that the 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; provided, however, that nothing set forth in the foregoing provisions of this paragraph (c) of Section 2 shall prevent or prohibit the Company from receiving the benefit of rights subsequently enacted under federal or state law which preempt any of the terms, provisions and/or obligations hereunder.

(c) This Agreement and the Franchise granted hereunder shall constitute both a right and an obligation to provide Cable Services. The Company's authority under this Agreement is subject to and must be exercised in strict accordance with the provisions of the City Code.

(d) This Franchise does not authorize the provision of any service other than Cable Services or in any way relieve the Company of any obligation to obtain any authorizations, licenses or franchises to use the Right-of-Ways in the City to provide other services. The provisions of this Agreement are not a bar to the imposition of similar, different or additional conditions with respect to the use of the Right-of-Ways in the City in connection with the provision of services other than Cable Services provided such additional conditions are materially consistent with the conditions imposed on similarly situated Right-of-Way users other than the Omaha Public Power District and the Metropolitan Utilities District. Nothing herein shall be read to prevent Company from providing other non-cable services to the extent consistent with Applicable Law.

(e) No Right-of-Ways shall be used by Company if the City determines that such use is inconsistent with the terms, conditions or provisions by which such Right-of-Ways were created or dedicated, or are presently used.

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

(1) Any other permit or authorization generally required under the City Code for the privilege of transacting and carrying on a business within the City that may be required by the City; or

(2) Any permits or agreements for occupying any other property of the City or private entities to which access is not specifically granted by this Agreement including, without limitation, permits and agreements for placing devices on or in poles, conduits, other structures, or railroad easements, whether owned by the City or a private entity.

(g) The Franchise granted by this Agreement shall be nonexclusive. The City specifically reserves the right to grant, at any time, such additional franchises for a Cable



System as it deems appropriate provided, however, such additional grants shall not operate to materially modify, revoke, or terminate any rights previously granted to Company. If any other wireline multichannel video programming distributor ("MVPD") enters into a written agreement with the City to provide Cable Services or Video Programming to Subscribers in the City, the City, upon written request of the Company, shall permit the Company to construct and/or operate Company's Cable System and provide Cable Service to Subscribers in the City under the exact same agreement as applicable to the new MVPD, if permissible under Applicable Laws. Within one hundred and twenty (120) Days after the Company submits a written request to the City, the Company and the City shall enter into a written agreement or other appropriate authorization (if necessary) containing the exact same terms and conditions as are applicable to the new wireline MVPD.

### Section 3. **TERM.**

(a) This non-exclusive Franchise shall be in effect for a period of ten (10) years from the date of adoption by the City (the "Effective Date"), unless sooner renewed or lawfully terminated in accordance with the terms hereunder and Applicable Law.

(b) Upon acceptance of this Franchise by Company, this Franchise shall supersede and replace any and all previous franchises or amendments thereto granted by the City and held by Company.

Section 4. **AREA TO BE SERVED.** The Company shall provide Cable Services within the corporate limits of the City as they presently exist, or may from time to time be altered. PROVIDED THAT, in the event the annexed area is served by a cable operator, Company has the option to extend its Cable System to the newly annexed area if Company determines that it is economically feasible to do so. Upon the annexation of any additional land area by the City, the annexed area shall be subject to all the terms of this Franchise upon sixty (60) days written notification by the City to Company. A cable operator other than Company whose Cable System already passes homes in an annexed area shall not extend its Cable System beyond those homes which it passes at the time the annexation occurs unless it otherwise obtains a franchise from the City. 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.

## Section 5. **CITY AUTHORITY AND PRE-EMPTION.**

(a) 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 health, safety and welfare of the public. Company, therefore, specifically agrees and covenants to comply with all applicable provisions of the City Code. In the event of a conflict between this Agreement, the City Code or applicable regulations of the City, the express provisions of this Agreement shall govern.

(b) Company acknowledges that the City may modify its regulatory policies by lawful exercise of the City's police powers throughout the term of this Agreement. Company agrees to comply with such lawful modifications. Company reserves all rights it may have to challenge such City Code modifications whether arising in contract or at law. The City reserves all of its rights and defenses to such challenges whether arising in contract or at law.

(c) 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.

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

## Section 6. **COMPLIANCE WITH STATE AND FEDERAL LAWS.**

(a) 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 services, in 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.

(b) Should the City Council determine that a material provision of this Agreement is affected by any subsequent action of the state or federal government, the City 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 7. **PAYMENT OF FRANCHISE FEE.**

(a) During the term of this Franchise, Company shall pay to City a Franchise Fee in an amount equal to five percent (5%) of Company's Gross Revenues. Upon ninety (90) days advance written notice from the City to Company, City may increase or decrease the Franchise Fee to the extent permissible under Applicable Law, and pursuant to said notice and direction, Company shall pay to City an annual Franchise Fee of up to the maximum amount permitted by Applicable Law. At any time during the duration of this Franchise, in the event that the City is authorized to collect an amount in excess of five percent (5%) of Gross Revenues, then the City may unilaterally amend this Franchise after holding a public hearing to provide that such excess amount shall be added to the Franchise Fee payments to be paid by Company to the City hereunder, provided that Company has received at least ninety (90) days prior written notice from the City of such amendment.

(b) The Franchise Fee shall be paid to the Finance Department of the City by check or other agreed upon means 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 during the period for which payment is made. The Company shall provide such information using the form attached hereto and incorporated by reference as Exhibit A. Each statement shall be verified as accurate by the proper financial officer of the Company and shall conform to GAAP applied on a consistent and fair basis.

(c) Within one hundred twenty (120) days following the conclusion of each fiscal year of the Company, the Company shall file an annual financial report prepared and verified as accurate by the proper financial officer of the Company. The report shall reflect the yearly total Gross Revenues, payments to the City, and all relevant financial information.

(d) In the event this Agreement 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 the Gross Revenues 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.

(e) 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 relevant records of the Company to determine whether the Franchise Fee was paid accurately, and the right to audit and re-compute any amounts payable thereto; provided that such audit shall commence within sixty (60) months following the close of each fiscal year of the Company. In the event the City determines that additional 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 re-compute the same.

(f) 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.

(g) For purposes of the fee to be paid by Company under this Franchise, in the case of Cable Service that may be bundled or integrated functionally with other services, capabilities, or applications of Company, the fee shall be applied only to the Gross Revenues attributable to Company's Cable Service, as reflected on the books and records of Company kept in the regular course of business in accordance with GAAP and Applicable Law.

(h) Accounting transactions between the Company, its parent corporation, if any, and third party contractors of the Cable System serving the City shall be fully disclosed to the City and subject to City's review to verify the accuracy of Franchise Fee payments made under this Agreement.

(i) During the term of the Franchise, the parties acknowledge and agree that the Franchise Fee payments and PEG funds provided to the City shall be deemed to be inclusive of any and all interconnection fee payments previously paid by the Company pursuant to prior franchise agreements.

Section 8. **COSTS.** The Company shall pay all incidental costs related to the renewal of this Franchise incurred by the City for which reimbursement is allowed pursuant to federal law

and the FCC. Payment of said costs shall be made within thirty (30) days following written notice from the City to the Company.

Section 9. **RATES.** The City shall have the right to regulate Company's rates and charges to the maximum extent permitted by Applicable Law. Company agrees to provide notices to the City and Subscribers of changes in rates as required by Applicable Law. Company agrees that it will not discriminate among Subscribers with regard to rates and charges made for any Cable Service based on considerations of race, color, creed, sex, marital or economic status, national origin, or neighborhood of residence; and shall comply with the non discrimination requirements of Applicable Laws.

Section 10. **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 Cable System.

(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 demand payment from

the letter of credit of the amount thereof, together with interest and any liquidated damages. Upon demand 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."

#### Section 11. **INSURANCE.**

(a) The Company shall, at its sole expense take out and maintain during the term of this Franchise a general comprehensive public liability insurance policy with a company licensed to do business in the State of Nebraska with a rating by A.M. Best & Co. of not less than "A" that shall protect the Company, City and its officials, officers, directors, employees and agents from claims which may arise from operations under this Franchise, whether such operations be by the Company, its officials, officers, directors, employees and agents or any subcontractors of Company. This liability insurance shall include, but shall not be limited to, protection against claims arising from bodily and personal injury and damage to property, resulting from Company's vehicles, products and operations in the minimum amount of \$5,000,000 combined single limit for property damage and bodily injury per occurrence.

(b) A certificate of insurance in compliance with this section shall be provided to the City within ten (10) Days after the Effective Date of the Franchise and shall, if acceptable to the City Attorney, be approved by the City Attorney. Thereafter, the Company shall immediately advise the City Attorney of any litigation that may develop that would affect this insurance. The policy shall provide coverage on an "occurrence" basis and shall name the City as an additional insured. Standard form of cross-liability shall be afforded. An endorsement shall be provided which states that the coverage is primary insurance with respect to claims arising from

Company's operations under this Franchise and that no other insurance maintained by the City will be called upon to contribute to a loss under this coverage.

(c) Prior to the Effective Date, Company shall submit to City a certificate documenting the required insurance, as well as any necessary properly executed endorsements. The certificate and documents evidencing Insurance shall be in a form acceptable to City. Renewal certificates shall be provided to City prior to the expiration date of any of the required policies. City will not be obligated, however, to review such endorsements or certificates or other evidence of insurance, or to advise Company of any deficiencies in such documents and receipt thereof shall not relieve Company from, nor be deemed a waiver of, City's right to enforce the terms of Company's obligations hereunder. City reserves the right to require further documentation reasonably necessary to form an opinion regarding the adequacy of Company's insurance coverage.

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

(e) City reserves the right to adjust the insurance limit coverage requirements of this Franchise no more than once every three (3) years. Any such adjustment by City will be no greater than the increase in the State of Nebraska Consumer Price Index (all consumers) for such three (3) year period.

(f) It is hereby understood and agreed that said insurance policy may not be cancelled by the insurer until thirty (30) Days after receipt by the City, by registered mail, of a written notice of such intention to cancel or not to renew.

## Section 12. **INDEMNIFICATION.**

(a) The Company shall indemnify, defend and hold the City, its officers, boards, commissions, agents and employees (collectively the "Indemnified Parties") harmless from and against any and all lawsuits, claims, causes or action, actions, liabilities, demands, damages, judgments, settlements, disability, losses, expenses (including reasonable attorney's fees and disbursements) and costs of any nature that any of the Indemnified Parties may at any time suffer, sustain or incur arising out of, based upon or in any way connected with the Company's operations, the exercise of this Agreement, the breach by Company of its obligations under this

Agreement and/or the activities of Company, its subcontractors, employees and agents hereunder. 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 for those claims or portions of claims arising out of the Company's operations 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 indemnification obligations of Company set forth in this Agreement are not limited in any way by the amount or type of damages or compensation payable by or for Company under workers' compensation, disability or other employee benefit acts, acceptance of insurance certificates required under this Agreement or the terms, applicability or limitations of any insurance held by Company. The indemnification of City by Company provided for in this Agreement shall apply to all damages and claims for damages of any kind suffered by reason of any of Company's operations referred to in this Agreement, regardless of whether such insurance policies shall have been determined to be applicable to any such damages or claims for damages. The City does not, and shall not, waive any rights against Company which it may have by reason of the indemnification provided for in this Agreement because of the acceptance by City, or the deposit with City by Company, of any of the insurance policies described in this Agreement.

(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. No recovery by the City of any sum by reason of the Letter of Credit required in Article I, Section 10 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. CABLE SYSTEM CONSTRUCTION.**

Section 1. **CABLE SYSTEM CONSTRUCTION.** The Company agrees to construct, install, operate and maintain a Cable System capable of providing a minimum of one hundred (100) Channels of Cable Service to Subscribers in the franchise area in a manner consistent with all laws, ordinances, construction standards, governmental requirements, FCC technical standards, and requirements of this Agreement.

### **Section 2. REQUEST FOR CONSTRUCTION.**

(a) The Company shall maintain for inspection by City records of written requests for extension of service for at least three (3) years.

(b) Upon request of the City, the Company shall furnish the City with progress reports indicating in detail any area of construction of the Cable System.

Section 3. **SUPERVISION BY THE CITY.** The Director of Public Works, or a Person appointed by the City Council may, from time to time, issue reasonable rules and regulations concerning the construction, operation and maintenance of the Cable System as are consistent with Applicable Law and the provisions of this Agreement.

Section 4. **IMPROVEMENTS & UPGRADES.** The Company shall at all times during the term of this Agreement upgrade and maintain the Cable System to provide similar technical capabilities, capacity, performance and functionality for the provision of Cable Services as other similarly situated cable systems operated by Cox in the United States.

Section 5. **ADDITIONAL MANDATORY EXTENSION.** The Company agrees to extend the Cable System into any areas of the City if the following conditions are met:

(a) **Mandatory Extension Rule.** Company shall extend the Cable System to any area, including areas annexed by the City when potential Subscribers can be served by extension of Cable System past occupied dwelling units equivalent to a density of twenty (20) homes per Street mile contiguous to the activated Cable System.

(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. 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. Company shall pay the first One Thousand and No/100 Dollars (\$1,000) of extension cost to each residential customer who falls beyond the mandatory density requirement of Section 5 (a) above but desires Cable Service from Company.

(c) **New Housing Projects.** In addition to the foregoing, the Company shall provide Service to all new housing projects within the Franchise Area with a projected housing density of thirty (30) dwelling units per Street mile. Service shall be provided within three (3) months after the subdivision is fifty percent (50%) 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 6. **MANDATORY CONTINUITY OF SERVICE.**

(a) It shall be the right of all Subscribers to continue receiving Cable Service insofar as their financial and other obligations to the Company are honored. In the event that the Company elects to overbuild, rebuild, modify, or sell the Cable 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 Cable System, the Company shall cooperate with the City, new franchisee or operator in maintaining continuity of Service to all Subscribers.

(b) In the event Company fails to operate the Cable System for seven (7) consecutive Days without prior approval of the City or without just cause, the City may, at its option, operate the Cable 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 Cable 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 7. **MAINTENANCE OF CABLE SYSTEM.**

(a) The Company shall erect and maintain all parts of the Cable System in good condition throughout the entire Franchise term in accordance with this Agreement and as provided by Applicable 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 Cable System use. Complaint procedures shall be established in the manner provided by the City Code.

(c) Subject to the privacy provisions of 47 U.S.C. § 521 et seq. (1993), Company shall prepare and maintain written records of all written complaints made to them and the resolution of such complaints, including the date of such resolution. Such written records shall be on file at the office of Company and made available to the City upon request. The Company shall, upon request of the City, annually furnish the City or the Advisory Committee with: (i) a report showing the number of Basic Service tier Subscribers; and (ii) a summary of how the Company resolved all written complaints forwarded to it by the City from Subscribers concerning the operation of the Cable System. The City agrees that it shall use its best efforts to keep any such reports generated by the Company as confidential and shall cause the Advisory Committee to do the same.

(d) The Company agrees to become and remain, during the term of this Agreement, a member in good standing of the Diggers Hotline of Nebraska, 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 and cumulative leakage index tests conducted pursuant to FCC standards and requirements.

Section 8. **CABLE SYSTEM OPERATION.** In addition to all other provisions of law and this Agreement, it is agreed this Cable System shall be installed and maintained in accordance with all applicable technical standards including, at minimum and where applicable, the technical standards promulgated by the FCC relating to Cable Systems pursuant to Title 47, Section 76, Subpart K of the Code of Federal Regulations, as may be amended or modified from time to time, which regulations are expressly incorporated herein by reference.

Section 9. **CUSTOMER SERVICE STANDARDS.** The City hereby adopts the Customer service standards set forth in Part- 76, §76.309- of the FCC's -rules and regulations, as amended. The Company shall comply in all respects with the Customer service requirements established by the FCC and those set forth herein.

(a) Company shall maintain a convenient local Subscriber service and bill payment location in the City for matters such as receiving Subscriber payments, handling billing questions, equipment replacement and Subscriber service information. The Company shall comply with the standards and requirements for Subscriber service set forth below during the term of this Franchise.

(b) Cable System office hours and telephone availability:

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

(i) Trained Company representatives will be available to respond to Customer telephone inquiries during Normal Business Hours.

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

(2) Under Normal Operating Conditions, telephone answer time by a Customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not

exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time under Normal Operating Conditions, measured on a quarterly basis.

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

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

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

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

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

(2) Excluding conditions beyond the control of the Company, the Company will begin working on "Service Interruptions" promptly and in no event later than twenty-four (24) hours after the interruption becomes known. The Company must begin actions to correct other Service problems the next business day after notification of the Service problem.

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

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

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

(d) Communications between Company and Subscribers.

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

- (i) Products and Services offered;
  - (ii) Prices and options for programming services and conditions of subscription to programming and other services;
  - (iii) Installation and Service maintenance policies;
  - (iv) Instructions on how to use the Cable Service;
  - (v) Channel positions of programming carried on the Cable System;
- and
- (vi) Billing and complaint procedures, including the address and telephone number of the City's cable office.

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

(3) Subscribers will be notified of any changes in rates, programming services or Channel positions as soon as possible in writing. Notice must be given to Subscribers a minimum of thirty (30) Days in advance of such changes if the change is within the control of the Company. In addition, the Company shall notify Subscribers thirty (30) Days in advance of any significant changes in the information required by Section 9(d)(1).

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

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

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

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

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

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

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

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

(g) Billing:

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

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

(h) Company shall, upon request, provide City with information which shall describe in detail Company's compliance with each and every term and provision of this Section 9.

(i) Subscriber Contracts.

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

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

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



In the event the City receives complaints regarding the Company's compliance with one (1) or more of the above-referenced standards in this Section 9, the City may request, and the Company shall provide, information and records kept in the Company's normal course of business documenting Company's compliance with the specific term and provision of this Section 9 that is the subject of the complaint. Grantee shall make a good faith effort to maintain its information and records in a manner so that the City can easily verify Company's compliance with the requirements of Section 9.

#### Section 10. **SERVICE TO PUBLIC BUILDINGS**

(a) The Company shall continue to provide, free of charge and throughout the term of this Agreement, one (1) service drop, one (1) Converter, if necessary, and Basic Service and Expanded Basic Service (i.e. together the equivalent of sixty (60) or more Channels of programming) or the future analog or digital equivalent of such service tiers offered by Company in the City ("Complimentary Service"), to all public facilities located in the City which are currently receiving such Complimentary Service as a part of the Existing System , including but not limited to: City Hall; all public fire stations and police stations; all public libraries; all PEG access facilities designated by the City; all City and County administrative and operational buildings; all public and private accredited K-12 schools located in the City ("Public Buildings"). Within ninety (90) days of the Effective Date of this Agreement, the Company and City shall exchange lists and agree upon the Existing Public Buildings which are currently receiving such Complimentary Service ("Existing Locations") as well as the current total number of active outlets (outlets where a television receiver is connected to a cable outlet) thereat (collectively "Documented Outlets") which list shall then be attached hereto as Exhibit C and incorporated by reference into this Agreement.

(b) The City and Company agree that the Company may hereinafter conduct an audit or audits (collectively, "Outlet Audit") at its sole expense during the term of this Agreement to determine whether the number of Documented Outlets agreed upon by the parties is accurate. Once the Outlet Audit is concluded, if it is determined that the number of Documented Outlets is inaccurate, the parties agree to meet to negotiate in good faith to determine what, if any, changes are necessary to this Agreement as a result thereof.

(c) For purposes of this Section 10, the term "Designated Representative" shall include anyone designated by the local governing body responsible for the Public Building in question. The Designated Representative may request that the Company install additional outlets at Existing Locations; provided, however, that the City shall pay the Company for the Installation Costs and for the Basic Service and Expanded Basic Service received at such active additional outlets. For purposes of this Section 10 of this Agreement, "Installation Costs" shall include only Company's documented cost of: 1) necessary materials, equipment and hardware to complete the installation; and 2) required labor charged at Company's lowest hourly service charge taking into account the classification and skill level of employee(s) needed to perform the functions necessary to complete the installation given the complexity thereof.

(d) The Designated Representative may also request a Complimentary Install (hereinafter defined) to Public Buildings not listed in Exhibit C of this Agreement ("New Request"), all of which New Requests shall be made in writing. Company shall be responsible for all costs of extension to a New Request for any installation which is less than two hundred (200) feet as measured from Company's nearest active plant. The Public Building shall pay any net additional drop or extension Installation Costs applicable for a New Request installation in excess of two hundred (200) feet. The recipient of the Complimentary Install to be provided by the Company will secure any necessary right of entry.

(e) All Existing Locations shall have the right to continue receiving any Cable Service which it has already extended throughout the applicable Public Building to additional outlets as part of the Existing System without any fees imposed by Company for either the Cable Service provided or the equipment necessary to receive the Cable Services; provided, however, that under no circumstance shall the City or Public Building occupant, or any third party, be permitted or allowed to further install additional outlets, it being agreed and understood that hereinafter only the Company shall be allowed to install additional outlets.

(f) For any Public Building for which a New Request is made, the Company shall provide one (1) service drop, two (2) outlets and two (2) Converter units for the Cable System without charge to the City or the Public Building occupant (a "Complimentary Install"), which Complimentary Install shall include Complimentary Service to the two (2) outlets provided. For any other additional outlets installed in conjunction with a New Request or at an Existing Location from and after the execution hereof, the City or the Public Building occupant shall pay:

1) the Company's Installation Costs; 2) Company for any equipment needed at each active additional outlet to receive Cable Service; and 3) for the Basic Service and Expanded Basic Service at each active additional outlet at a rate set forth in Section 10 (h) of this Agreement. At no time after a New Request is made shall the Designated Representative, either directly or through a third party, cause additional outlets to be installed at said building by a party other than the Company.

(g) If ancillary equipment, such as a Converter, is required to receive Complimentary Service at Documented Outlets or those two (2) outlets which are included as part of a Complimentary Install after the Effective Date hereof, Company shall not charge therefor. For all other ancillary equipment needed, the Company may charge its standard residential equipment rates to the City or applicable Public Building occupant therefor. In order to avoid any future confusion regarding the terms of this paragraph (g), the parties agree to work together to compile a list of the ancillary equipment currently provided as part of the process to determine the Documented Outlets (Section 10 (a)) as well as the Company's Outlet Audit process (Section 10 (b)).

(h) Notwithstanding anything to the contrary set forth in this Section 10 of this Agreement, Company and the City agree that: (i) Company shall not be required to honor a New Request and/or provide a Complimentary Install to any Public Building unless it is technically feasible; (ii) if service is available or could be made available from any other cable television franchisee, then the Company shall have the right of first refusal to provide Complimentary Service and related services which the City may request or require for any new Public Building which is built or acquired by the City in the future; (iii) given the right of first refusal granted herein, in each and every circumstance in which the Company shall be entitled to charge a fee or rate for installation, Service or ancillary equipment being provided to the City or Public Building occupant, the Company shall charge no more than the lowest rate without regard to the scope of services, number of outlets or pieces of equipment involved. The City agrees to remit payment to Company as set forth in Section 10 (h) (iii) for as long as Company maintains that the provision of Complimentary Service to each additional outlet impacts the fees which the Company must pay to its providers of programming.

(i) Nothing in this Section 10 of this Agreement is intended to prevent a separate written agreement between any entity receiving services under the terms hereof and the

Company regarding the subject matter hereof. To that end, in the event a separate written agreement with any such entity is negotiated and agreed upon, the Company shall give notice thereof to the City and advise therein as to the provisions of this Franchise which are no longer applicable to such entity. In no event, however, shall Company be relieved of its obligations to meet the requirements of this Section 10 should such a written agreement fail to materialize, be terminated, or expire during the term of this Agreement.

(j) The City acknowledges and agrees that the Company shall have no obligation to provide Complimentary Service to any private person or entity which is leasing space in a Public Building.

#### **Section 11. PUBLIC, EDUCATIONAL, AND GOVERNMENTAL ACCESS OBLIGATIONS**

Company shall at all times during the term of this Agreement comply with the requirements of Exhibit B governing the provision of PEG access in the City.

### **ARTICLE III. ADMINISTRATION AND ENFORCEMENT.**

#### **Section 1. PERFORMANCE EVALUATION SESSIONS.**

(a) Within six (6) months following the fifth (5<sup>th</sup>) anniversary of the Effective Date of this Agreement, the City may notify the Company in writing of its intention to conduct a performance evaluation of the Company's performance under this Agreement. The Company shall cooperate with such evaluation process.

(b) The Company shall cooperate with City during any evaluation session and shall provide such information and documents as City may reasonably request to perform the review but shall not be required to generate new documents.

(c) At the conclusion of the evaluation, the City and the Company shall discuss the results and determine whether any amendment to this Agreement is necessary. The parties shall negotiate in good faith to effectuate any mutually agreed-upon amendment.

#### **Section 2. 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 maintain records and provide reports as requested by the City and as required herein or by ordinance – One Hundred and No/100 Dollars (\$100) per Day.

(2) For failure to provide the PEG Access Channels as set forth herein – Two Hundred Fifty and No/100 Dollars (\$250) per Day.

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

(4) Forty-five (45) Days following adoption of a resolution of the City Council determining a failure of Company to comply with mandatory extension obligations or technical standards, Company shall pay to City One Hundred and No/100 Dollars (\$100) per Day for each Day, or part thereof, that such noncompliance continues.

(5) If the City Council shall adopt a resolution determining that Company has failed to meet the customer service requirements set forth herein for the measurement period just concluded and thereafter Company again fails to meet said customer service requirements for the calendar quarter following, then Company shall pay to City One Thousand and No/100 Dollars (\$1,000) per month for each month in which such customer service was insufficient.

(b) The letter of credit shall become the property of the City in the event that Company's 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.

### Section 3. **TERMINATION.**

(a) In addition to all other rights and powers retained by the City under this Agreement or authorized by Applicable Law, the City reserves the right to 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 or transfer the Cable System without the City's prior written approval;

(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 a mandatory Cable System extension;

(5) Company has practiced fraud or deceit upon City.

(c) 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.

(d) 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 City Council. The City shall cause to be served upon Company, at least twenty (20) Days prior to the date of such City Council meeting, a written notice 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 City Council is to consider.

(e) The City 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.

(f) If the City Council shall determine the violation by the Company was the fault of Company and within its control, the City Council may, by resolution, declare that the Franchise of the Company shall be terminated, unless there is compliance within such period as the City 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.

(g) The issue of termination shall automatically be placed upon the City Council agenda at the expiration of the time set by it for compliance. The City 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.

(h) The City or Company may terminate its rights under this Agreement if permitted under federal or state law by providing written notice to the other of not less than one hundred-eighty (180) days prior to the Effective Date of such termination or as otherwise provided for by Applicable Laws.

Section 4. **FORECLOSURE.** Upon the foreclosure or other judicial sale of all or a substantial part of the Cable System, or upon the termination of any lease covering all or a substantial part of the Cable 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 City Council to such change in control of the Company shall apply.

Section 5. **RECEIVORSHIP.** The City Council shall have the right to cancel this Agreement one hundred twenty (120) Days 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 Laws.

#### **ARTICLE IV. RIGHTS UPON TERMINATION**

Section 1. **Right to Require Removal of Property.** Upon termination, cancellation as a result of receivership, or the expiration of the term for which the Franchise is granted

provided no renewal is granted, the City shall have the right to require Company to remove at Company's own expense all or any part of the Cable System from all Streets and public ways within the City. If Company fails to do so, the City may perform the work and collect the cost thereof from Company. The actual cost thereof, including direct and indirect administrative costs, shall be a lien upon all plant and property of Company effective upon filing of the lien in accordance with Applicable Laws.

Section 2. **CONTINUITY OF SERVICE MANDATORY.** Company shall make its best effort to ensure that all Subscribers receive continuous uninterrupted Cable Service so long as their financial obligations to Company are honored. In the event of purchase, lease-purchase, acquisition, sale, lease, or other transfer to any other Person, including any other operator of a cable communications franchise, Company shall cooperate fully with the City to operate the Cable System in accordance with the terms and conditions of this Agreement through the transition, to maintain continuity of Service to all Subscribers.

#### **ARTICLE V. MISCELLANEOUS PROVISIONS.**

Section 1. **NOTICES.** All notices, reports, or demands required to be given in writing under this Agreement shall be deemed to be given when delivered personally to any officer of Company or City's authorized agent forty-eight (48) hours after it is deposited in the United States mail in a sealed envelope, with registered or certified mail postage prepaid thereon, addressed to the party to whom notice is being given, as follows:

To City:

City Clerk  
1819 Farnam Street, Ste LC-1  
Omaha, NE 68183

With a courtesy copy to:

City Attorney  
1819 Farnam Street, Suite LC-1  
Omaha NE 68183

To Company:

Cox Communications – Omaha  
ATTN: System Manager  
11505 W. Dodge Road



Omaha, NE 68154

With a courtesy copy to:

Cox Communications, Inc.  
ATTN: Government Affairs  
1400 Lake Hearn Drive  
Atlanta, GA 30319

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

(b) Company shall also maintain a local point of contact with a local or toll-free telephone number for the conduct of matters related to this Agreement during Normal Business Hours.

## Section 2. **BOOKS AND RECORDS.**

(a) All books and records of the Company necessary to ensure compliance with this Agreement shall be made available to the City or its representatives at a location within the City.

(b) Upon request by the City, the Company agrees to provide a either a list of all shareholders holding ten percent (10%) or more of the outstanding shares of Company or a chart or similar document stating the ownership structure of the Company that includes the ultimate parent company. Upon request, the Company shall provide the City with copies of publicly available financial reports that the Company files with any government agency.

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 written 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. Company may charge the appropriate party for relocations made at the request of a third party.

Section 4. **ADMINISTRATION.** The City 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. The Company agrees to cooperate with the Advisory Committee.

Section 5. **REMOVAL OF FACILITIES.** Upon termination of Service to any Subscriber, at the written request of the Subscriber the Company shall at its own expense, promptly remove all of its facilities and equipment from the premises of such Subscriber.

Section 6. **OTHER PETITIONS AND APPLICATIONS.** Upon request of the City, Company shall provide copies of public filings 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 the Cable System or Cable Services authorized pursuant to the Franchise.

Section 7. **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 Laws.

Section 8. **PARENTAL CONTROL.** The Company shall provide adequate security provisions in its Subscriber equipment to permit parental control over the use of Cable Services on the System consistent with federal law.

Section 9. **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 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 legal, technical and 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 one hundred and twenty (120) 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 City to any assignment, sale, transfer, or sublet, shall not constitute a waiver or release of any pending violations of this Franchise, known or unknown to the City or Company, nor any enforcement rights of the City under the City Code or this Franchise.

Section 10. **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 Company 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 11. **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 12. **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 13. **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 seek termination or other appropriate remedy.

Section 14. **ABANDONMENT.** Any property abandoned by the Company shall become, at the option of the City, property of the City and the Company agrees to execute and deliver an instrument in writing, transferring its ownership interest in any such property to the City.

Section 15. **NON-DISCRIMINATION.** The Company shall at all times comply with all provisions of the City Code at Section 10-192-194. – Equal Employment Opportunity Clause, as may be amended from time to time.

Section 16. **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 17. **EFFECTIVENESS OF AGREEMENT.** 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 ten (10) 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 \_\_\_\_ day of \_\_\_\_\_, 2012.

Attest:

CITY OF OMAHA, NEBRASKA

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

Attest:

COX COMMUNICATIONS OMAHA, LLC

\_\_\_\_\_  
Vice President – Government & Community Affairs  
Cox Communications Omaha, LLC

\_\_\_\_\_  
Senior Vice President/General Manager  
Cox Communications Omaha, LLC

**EXHIBIT A**  
**Franchise Fee Payment Worksheet**

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

Fee Factor: 5%

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

1. **Number of PEG Channels.** Upon the Effective Date of the Agreement, the Company shall provide to the City four (4) Channels on the Basic Service tier for dedicated noncommercial PEG access programming. The City shall determine how the Channels are programmed for PEG purposes.
2. **Public Access Studio.** Company shall maintain, free of charge to the City, the existing public access studio ("Studio") located at 11505 West Dodge Rd, Omaha, NE, for a minimum of six (6) months from the Effective Date of this Agreement. During this six (6) month period Company shall continue to maintain an employee to facilitate public access programming and playback and the hours of operation at the Studio shall remain no different than 2011 hours of operation.
3. **Transition Period.** Company shall have the right to close the Studio after six (6) months from the Effective Date of this Agreement. The Company and City will determine if the Studio equipment has any remaining useful life or if the Company has a need to retain the equipment for another use. Company will transfer title of any useable playback and production equipment currently in use at the Studio so programming can be played back at one (1) of the remaining three (3) playback locations - University of Nebraska Omaha located at 6001 Dodge Street, Omaha, NE 68182; CTI-22 facility located at 2724 North 24 Street, Omaha, NE 68110; Omaha City Hall located at 1819 Farnam Street, Omaha, NE 68183; or at any other location selected by the City. Title to the equipment shall be transferred to the City or to a designated third party non-profit entity responsible for producing and airing public access programming in the City. City shall be responsible for transporting any transferred equipment to the new location. City will use its best efforts to shorten the transition period in order to allow the Company to close the Studio before the six (6) month transition period has elapsed.
4. **Return of One Analog PEG Channel.** At the end of the six (6) month transition period, Company may program Channel 17 at its sole discretion and it shall no longer be designated as a PEG Channel. Thereafter Company shall be required to provide no fewer than three (3) PEG Channels on the Basic Service tier for dedicated noncommercial PEG access programming, one of which Channels will continue to be transmitted in digital format only. The City shall determine how the Channels are programmed for PEG purposes.
5. **Control of PEG Channels.** The control and administration of the PEG Channels shall rest with the City and the City may delegate, from time to time over the term of this Agreement, such control and administration to various entities as determined in City's sole discretion. The City may at any time allocate or reallocate the usage of the PEG Channel(s) among and between different uses and users in the City's sole discretion. To that end, the City acknowledges and agrees that from and after the end of the six (6) month transition period, Company shall have no obligation or responsibility to provide personnel or administrative support to assist in the operation of the PEG Channels, including those functions previously undertaken by employees of the Company in regard to the broadcasting of meetings of the Omaha City Council. However, Company agrees to cooperate and consult with City, free of charge, to ensure that any City equipment purchases and installations completed by the City are

compatible with the Company's Cable System, technology and reasonably foreseeable system specifications.

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

7. **PEG Channels carried in High Definition.** At such time as Company no longer offers the Basic Service tier in an analog format, the City shall have the option, upon one hundred twenty (120) Days written notice to Company, to provide PEG Channel signals to Company in a high-definition (HD) format (e.g., 1080i [1920 x 1080 interlaced], or some other format) utilized by one (1) or more of the commercial broadcast television stations. Company shall, without cost to the City, provide, install, and maintain in good working order the equipment necessary for transmitting such signals to Subscribers.

8. **PEG Channel Locations.** Company shall make every reasonable effort to coordinate the cablecasting of PEG access programming on the Cable System on the same Channel designations as such programming is currently cablecast within the City. Company may move PEG Channel locations upon thirty (30) Days written notice to the City by Company. Company shall use its best efforts to place PEG Channels in a consecutive or near-consecutive block of Channel numbers in reasonably close proximity to other public affairs programming (e.g., CSPAN, PBS) on the Basic Service tier. Company agrees not to encrypt the PEG Channels any differently than other commercial Channels available on the Cable System.

9. **Programming Delivery.** City shall ensure PEG Channels and signals are in compliance with applicable FCC technical standards so the signal quality can be processed in Company's headend and retransmitted to Subscribers. Company shall not discriminate against PEG Channels with respect to the functionality, signal quality, and features from those of the local broadcast Channels carried on the Cable System. With respect to signal quality, Company shall not be required to carry a PEG Channel in a higher quality format than that of the Channel signal delivered to Company, but Company shall distribute the PEG Channel signal without degradation. Company may transmit the PEG Channels to Customers in a format of its own choosing, subject to Section 7, above. Any and all costs associated with any modification or conversion of the PEG Channels or signals after the PEG Channels/signals leave the City's



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

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

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

**12. Dedicated Fiber Return Lines.** Company shall maintain throughout the life of this Agreement all fiber return lines and other return lines and associated equipment that are listed below and as of the Effective Date of the Agreement to enable the distribution of PEG access programming to Company's Subscribers. The City shall ensure PEG Channels and signals leaving the playback facilities are in compliance with applicable FCC technical standards. Company shall construct, repair and maintain over the term of the Agreement all necessary technical equipment, fiber and related infrastructure to provide high quality twenty-four (24) hours per day fiber return feeds for each PEG Channel from the following designated access sites to Company's Cable System headend:

1. Omaha City Hall, 1819 Farnam Street, Omaha, NE 68183
2. University of Nebraska Omaha, 6001 Dodge Street, Omaha, NE 68182
3. Public access center location (for the six (6) month transition period), 11505 West Dodge Road, Omaha, NE
4. CTI - 22 facility location, 2724 North 24 Street, Omaha, NE 68110

**13. Future Fiber Return Lines for PEG.** At such time that the City determines:

(a) that the City desires the capacity to allow Subscribers in the City to receive PEG programming (video or character generated) which may originate from schools, City facilities, other government facilities or other designated facilities (other than those indicated in paragraph 12 above ); or

(b) that the City desires to establish or change a location from which PEG programming is originated; or

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

#### **14. PEG Capital Grant.**

(a) Company shall provide an unrestricted cash grant to the City in the total amount of Two Million Dollars (\$2,000,000) ("PEG Grant") as set forth below. The PEG Grant may be spent by the City on any PEG related expense (capital or operational) as determined in City's sole discretion. The City need not expend the PEG Grant funds immediately but rather may place such funds in a designated account with principal and interest to be used solely for PEG purposes over the term of the Agreement as determined solely by the City. City shall not encumber the funds for any other purpose.

(b) Company shall provide the PEG Grant to the City according to the following schedule:

- i. Within thirty (30) days of the Effective Date of the Agreement: Two Hundred Thousand Dollars (\$200,000);
- ii. On each of the first and second anniversaries of the Effective Date of the Agreement: Three Hundred Thousand Dollars (\$300,000); and
- iii. On each of the third through eighth anniversaries of the Effective Date of the Agreement: Two Hundred Thousand Dollars (\$200,000).

(c) The PEG Grant shall not be considered "Gross Revenues" and is not part of the Franchise Fee. The parties agree that the PEG Grant falls within one (1) or more of the exceptions in 47 U.S.C. § 542(g)(2)(c). Company expressly agrees not to categorize, itemize or pass the cost of the PEG Grant through to Subscribers. Nothing shall preclude Company from including the cost as part of its general rate-setting process. Company agrees that it will not offset or reduce its payment of past, present or future Franchise Fees required as a result of its obligation to remit the PEG Grant.

(d) Any PEG Grant amounts owing pursuant to this Agreement which remain unpaid more than twenty-five (25) Days after the date the payment is due shall be delinquent and shall thereafter accrue interest at twelve percent (12%) per annum or the prime lending rate

published by the Wall Street Journal on the day the payment was due plus two percent (2%), whichever is greater.

**15. PEG Technical Quality.**

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

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

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

**17. Relocation of Company's Headend.** In the event Company relocates its headend, Company will be responsible for replacing or restoring the then-existing capability to send and receive PEG Channel programming at all existing locations at Company's cost so that all the functions and capacity remain available, operate reliably and satisfy all applicable technical standards and related obligations of the Agreement free of charge to the City or its designated entities.

**EXHIBIT C**  
**List of Complimentary Service Locations in City**

**Note: to be completed by the parties with 90 days of the Effective Date of the Agreement – See Section 10 herein.**