

ORDINANCE NO. 13,642

AN ORDINANCE granting unto Heritage Cablevision, Inc., d/b/a TCI of Central Iowa renewal of a franchise to construct, reconstruct, operate and maintain a cable television system and to sell and supply cable services within the City for a term expiring June 30, 2008; prescribing the terms and conditions thereof; and providing for the imposition of a franchise fee and other requirements; and repealing Ordinance No. 10,227.

BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa, as follows:

Section 1. Heritage Cablevision, Inc., d/b/a TCI of Central Iowa is hereby granted a franchise to construct, reconstruct, operate and maintain a cable television system and to sell and supply cable services within the City for a term expiring June 30, 2008, pursuant to the following terms and conditions:

FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT (hereinafter the "Franchise" or "Agreement"), made and entered into this 28th day of September, 1998, by and between the City of Des Moines, a municipal corporation of the State of Iowa (hereinafter the "City" or "Grantor"), and Heritage Cablevision, Inc. d/b/a TCI of Central Iowa (hereinafter the "Grantee").

SECTION 1. GENERAL PROVISIONS

1.1 Definitions.

The following terms, phrases, words and their derivations shall have the meaning given herein. 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 words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

"Applicable Laws." Means and includes, but is not limited to, State of Iowa and federal laws, rules and regulations, and City Code or ordinance provisions, pertaining to cable television systems and to the provision of cable television services, and City Code or ordinance provisions regulating the use or occupancy of City rights-of-way, regulating excavations in or obstructions of City rights-of-way, or regulating streets and sidewalks.

"Basic Cable Service." Any service tier which includes the retransmission of local television broadcast signals. Basic cable service as defined herein shall not be inconsistent with 47 U.S.C. § 543(b)(7) (1993).

"Cable." A collection of fibers or copper wires which is contained within a protective sheath.

"Cable Act." The Cable Communications Policy Act of 1984, Pub. L. No. 98-549, 98 Stat. 2779 (1984) (codified at 47 U.S.C. §§ 521-611 (1982 & Supp. V 1987)) as amended by the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385 and the Telecommunications Act of 1996, Pub. L. No. 104-458 and as the same may, from time to time, be amended.

"Cable Services."

1. The one-way transmission to subscribers of video programming or other programming service; and
2. Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

"Cable Television System," "System," "CATV," or "Cable System." A facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within 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 rights-of-way;
3. A facility of a common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. §§ 201-226, except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541) to the extent such facility is used in the transmission of video programming directly to subscribers; or
4. Any facilities of any electric utility used solely for operating its electric utility system.

"Cable Television Service Equipment" or "Service Equipment." Means and includes cables, amplifiers, converters, or other pieces of equipment owned by Grantee and typically installed by Grantee on a subscriber's premises in order to provide cable service.

"Cable Television System Equipment" or "System Equipment." Means and includes, but is not limited to, the distribution system, towers, house connections, structures, poles, wire, coaxial cable, fixtures, electronic and/or optical components required for connection to or interconnection of fiber-optic and electronic transmission systems, and includes support systems such as electrical service, heating, ventilation and air conditioning, and appurtenances required to make such equipment functional.

"Channel" or "Cable Channel." For the purposes of sections 4 and 6 herein only, a 6 megahertz band for transmission of visual and audio signals for television, unless a greater bandwidth is specified by the FCC for television of greater resolution.

"City." The City of Des Moines, Iowa.

"Council." The City Council of the City of Des Moines, Iowa.

"FCC." The Federal Communications Commission.

"Franchise." A legal contract between the City and a person which contract contains terms and conditions for constructing and operating a cable television system.

"Franchise Fee." Means any tax, fee or assessment of any kind imposed by the City on a cable operator or cable subscribers solely because of their status as such. The term "Franchise Fee" does not include, by way of example: (i) 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 subscribers); (ii) capital costs which are required by the Franchise or otherwise to be incurred by the Grantee for PEG facilities; (iii) 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; (iv) any fee imposed under Title 17 of the United States Code; (v) any and all generally applicable costs and expenses incurred by Grantee or generally applicable obligations imposed upon Grantee related to its equipment being in the right-of-way including but not limited to installation, maintenance, removal, or relocation and to any restoration of the right-of-way as a result thereof but not including such costs and expenses which are unduly discriminatory against cable operators or subscribers; or (vi) any civil or criminal penalties or interest on overdue funds.

"Governmental Authority." Any court or other federal, state, county, municipal or other governmental department, commission, board, agency or instrumentality.

"Grantor." The City of Des Moines, Iowa as represented by the Council or any delegate acting within the scope of his or her delegated authority. The City Manager shall be responsible for the continuing administration of the Franchise.

"Gross Revenues." To the maximum extent permitted by law, all revenue derived directly or indirectly by the Grantee, its affiliates, subsidiaries, parents, or any person in which Grantee has a financial interest, arising from or attributable to the operation of the cable system to provide cable service within the City, regardless of how such Grantee's services are packaged. Notwithstanding the above, "gross revenues" would include by way of example but not limitation the following: basic cable service; expanded basic cable service; premium services, including "a la carte" and/or mini pay services; pay-per-view services; digital tier; DMX; FM and other audio; installation and reconnect fees; in-home wiring maintenance; Converter (addressable and non-addressable), digital terminals, and remote rentals; late fees; returned check charges; Franchise Fees; two-way cable service fees; in-house guide subscription fees; bill insert revenues; revenue sharing arrangements with MDU owners/developers; Internet service; advertising; leased access; Home Shopping, "The Box" and other programming services with which Grantee has a revenue-sharing agreement; sale of subscriber information to third parties;

Carriage consideration received from programmers by Grantee; and sale of programming developed for institutional users.

"House Drop." The wire or cable that connects each building or home to the main (trunk) cable.

"Installation." The connection of the system to subscribers' terminals, and the provision of cable service.

"Normal Business Hours." Those hours during which most similar businesses in the City are open to serve customers. In all cases, "normal business hours" must include some evening hours at least one night per week as well as some weekend hours.

"Normal Operating Conditions." Those service conditions which are within the control of the Grantee. Those conditions which are not within the control of the Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages beyond the control of the franchisee or any related entity, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the Grantee 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 system.

"Person." Any individual or any corporation, partnership, business, firm or other organization.

"Public Access, Educational, and Governmental Channels, Programming or Facilities" or "PEG Facilities."

1. Channel capacity designated for public access, City, Des Moines Independent Community School District, or higher education/college use; and

2. Facilities and equipment for the use of such channel capacity.

"Right-of-Way." The surface and space above and below any public street, boulevard, road, highway, freeway, lane, alley, court, sidewalk, parkway, tunnel, viaduct, or bridge which has been officially dedicated for public travel and which has traditionally been used for the provision of utility services to the public, in which the City has an interest in law or in equity, whether held in fee or other estate or interest, or as a trustee for the public; provided however, that skywalks, sidewalks within public cemeteries, and sidewalks and trails within public parks and on river levees, shall not be considered right-of-way available for use by cable television grantees.

"Service Area" or "Franchise Area." The entire geographic area of the City as it is now constituted or may in the future be constituted, unless otherwise specified in the Franchise.

"Service Interruption." The loss of picture or sound on one or more discreet programming channels regardless of system bandwidth used to provide the programming.

"State." The State of Iowa.

"Subscriber." Any person who or which lawfully elects to subscribe to, for any purpose, a service provided by the Grantee by means of or in connection with the cable system whether or not a fee is paid for such service.

1.2 Office/Service/Business Center.

Throughout the term of this Franchise, Grantee shall continue to maintain its principal local system office and service center, now located in the City and any significant future expansion of its operations that serve the Des Moines Metro area, within the City of Des Moines.

1.3 Written Notice.

All notices, reports or demands required or permitted to be given under this Agreement or Ordinance shall be in writing and shall be deemed to be given when delivered personally to the party designated below, or when five (5) business days have elapsed after deposit in the United States mail postage prepaid in a sealed envelope and addressed to the party to which notice, report or demand is being given as follows:

If to City: City Manager

City of Des Moines

400 E. First Street

Des Moines, Iowa 50309-1891

If to Grantee: General Manager

[Heritage Cablevision, Inc. or

TCI of Central Iowa]

2205 Ingersoll Avenue

Des Moines, Iowa 50312

Subject to Section 1.2, such addresses may be changed by either party upon notice to the other party given as provided in this Section.

SECTION 2. RENEWAL OF FRANCHISE

2.1 Grant.

Pursuant to the Cable Ordinance, the Franchise which was granted effective on February 3, 1983 (Ordinance No. 10,277), is hereby renewed, subject to the terms and conditions of this Agreement. The Franchise, as renewed hereby, provides Grantee with the authority, right and

privilege to construct, reconstruct, operate, and maintain a Cable Television System within the City of Des Moines.

2.2 Right of Grantor to Issue and Renew Franchise.

Grantee acknowledges and accepts the right of Grantor to issue and/or renew the Franchise and Grantee agrees that it shall not now or at any time hereafter challenge any lawful exercise of this right by Grantor in any local, state, or federal court.

2.3 Conditions For Use and Occupancy of City Rights-Of-Way and Utility Easements.

Grantee shall be allowed to use and occupy the City rights-of-way, as that term is defined herein, for the emplacement of its cable television system equipment; provided, however, Grantee shall be allowed to use subdivision utility easements to the extent such easements provide for the construction and operation of cable television system equipment and service equipment therein. Further provided, that in such use and occupancy of City rights-of-way and subdivisions utility easements, Grantee shall be subject to all generally applicable City ordinances and obligations therein including, but not limited to, those provisions of the Municipal Code regulating the use and occupancy of such rights-of-way, pertaining to excavations for underground cables, and pertaining to streets and sidewalks, and further provided that Grantee shall not construct any cable television plant or system equipment until Grantee has secured the necessary permits from Grantor, or other applicable governmental authorities.

2.4 Effective Date of Renewal.

The renewal of the Franchise provided for in this Agreement shall be effective upon passage of this Franchise as an ordinance by the Des Moines City Council, execution of this Franchise by both parties, and publication as required by law, which publication shall occur on October 5, 1998 (the "effective date"); provided that prior to the effective date the Grantee has filed with the City Clerk of the City; a duplicate original of this Agreement duly executed by Grantee together with the security and insurance certificates provided for in this Agreement and the Ordinance.

2.5 Term.

This Franchise shall commence on its effective date and shall expire on June 30, 2008, unless terminated earlier.

2.6 Ownership of Grantee.

Grantee represents and warrants to Grantor that the names of the shareholders, partners, members, or other equity owners of the Grantee and of any of the shareholders, partners, members, and/or other equity owners of Grantee are as set forth in Exhibit A.

2.7 Franchise Renewal.

Any renewal of this Franchise shall be in accordance with Applicable Laws. Grantor and Grantee, by mutual consent, may enter into renewal negotiations at any time during the term of the Franchise.

SECTION 3. GENERAL REQUIREMENTS

3.1 Governing Requirements.

Grantee shall comply with all lawful requirements of this Agreement and Applicable Laws.

3.2 Franchise Fee.

In consideration of the renewal of the Franchise provided for herein, the Grantee shall, at all times during the term of this Agreement, pay to Grantor a Franchise Fee of five percent (5%) of Grantee's Gross Revenues. Gross Revenues shall be the basis for computing the Franchise Fee. Gross Revenues shall not include any taxes on services furnished by the Franchisee which are imposed upon any subscriber or user by the state, county, City or other governmental unit and collected by the Franchisee on behalf of said governmental unit and which the Franchisee passes on in full to the applicable tax authorities. Franchise Fees are not taxes and, if collected by Grantee from subscribers, would be part of Gross Revenues.

Within 30 days after the end of each month, the Grantee shall pay to the City a Franchise Fee equivalent to five percent of Gross Revenues for that month, along with a report showing the calculations for the derivation of the payment along with any other information required by the Grantor.

The Grantee, on an annual basis, within ninety (90) days of the close of the calendar year, shall furnish a report prepared by an independent Certified Public Accountant, at Grantee's sole expense, with that accountant's certification that the total of the fees paid to the City during the previous calendar year are equal to the Franchise Fee due for such period. That report shall detail all revenues received by the Grantee and show the source of those revenues. The City reserves the right to require that additional information be submitted by the Grantee detailing revenue relative to the Grantee's facilities and services within the City for such period.

In addition, and notwithstanding any other provision herein with respect to books and records of Grantee, upon ten (10) days prior written notice, Grantor shall have the right to conduct or to have conducted its own independent audit of Grantee's records. All books and records required to do a complete audit of the Grantee's Franchise Fees shall be provided to the City's auditors. If such audit indicates a Franchise Fee underpayment of two percent (2%) or more, in addition to any other remedies available to the Grantor, the Grantor may require the Grantee to pay all reasonable costs of such audit and shall remit to Grantor all applicable Franchise Fees due and payable together with interest thereon at the lessor of the maximum rate permitted by law or eleven (11%) per annum.

3.3 Not Franchise Fees.

(a) Grantee acknowledges and agrees that except for the Franchise Fee obligations as expressly provided for in Section 3.2 hereof, none of the payments or contributions to be made by Grantee; or the services, equipment, facilities, support, resources, or reimbursements; or other activities to be provided or performed by Grantee pursuant to this Agreement; or expenses in connection with the construction, operation, maintenance, or upgrade of the System (including specifically, but not by way of limitation, such payments, contributions, services, equipment, facilities, support, resources or other activities described in or provided for in any section of this Agreement and the Exhibits hereto) shall be deemed Franchise Fees chargeable against the Franchise Fees payable by Grantee to the City pursuant to Section 3.2 hereof.

(b) Grantee acknowledges and agrees that the Franchise Fee payable by Grantee to the City pursuant to Section 3.2 hereof shall take precedence over all other payments, contributions, services, equipment, facilities, support, resources, or other activities to be provided or performed by the Grantee pursuant to this Agreement and/or the Ordinance, and that the Franchise Fee provided for in Section 3.2 of this Agreement shall not be deemed to be in the nature of a tax, and shall be in addition to any and all taxes of general applicability and other generally applicable fees and charges which the Grantee shall be required to pay to the City and/or to any other governmental authority, all of which shall be separate and distinct obligations of Grantee.

(c) Grantee shall not apply or seek to apply or make any claim that all or any part of the Franchise Fee or other payments or contributions to be made by Grantee to Grantor pursuant to this Agreement shall be deducted from or credited or offset against any taxes, fees, or assessments of general applicability levied or imposed by the City or any other governmental authority, 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 Grantee or subscribers.

(d) Grantee shall not apply or seek to apply all or any part of any right-of-way registration, permit or inspection fees that may be lawfully imposed; any civil or criminal penalties; any refunds or interest due on any past due obligations; or any taxes, fees, or assessments of general applicability levied or imposed by the City or any other governmental authority as a deduction or other credit from or against any of the Franchise Fee or other payments or contributions to be paid or made by Grantee to Grantor pursuant to this Agreement and/or the Ordinance, each of which shall be deemed to be separate and distinct obligations of the Grantee.

3.4 Recovery of Processing Costs.

During the term of this Agreement, if the Grantee initiates a request for approval regarding the transfer of this Franchise or a change in control of the Grantee, the Grantee shall reimburse the Grantor for all expenses including out-of-pocket expenses, including by way of illustration and not by way of limitation, attorneys' and consultants' fees and costs up to a maximum of \$25,000 per transaction, incurred by the Grantor in connection with Grantor's review and processing of Grantee's requests. Payments of such costs and expenses shall not be deemed to be "Franchise Fees" within the meaning of Section 3.2 of this Agreement.

3.5 Insurance Requirements.

The Grantee shall purchase and maintain insurance to protect the Grantee and the City throughout the duration of the Franchise. Said insurance shall be provided by an insurance company(ies) approved by the insurance commissioner of the State of Iowa and having no less than an A.M. Best rating of "A" ("Excellent"). All policies shall be written on a per occurrence basis, not a claims made basis, and in form and amounts and with companies satisfactory to the City. Certificates of Insurance confirming required insurance coverage shall be submitted to the City prior to contract execution or commencement of work and/or services.

(a) INSURANCE REQUIREMENTS

(i) WORKER'S COMPENSATION INSURANCE: The Grantee shall procure and maintain during the life of this Franchise, Worker's Compensation Insurance, including Employer's Liability Coverage, in accordance with all applicable statutes of the State of Iowa. The coverage limits shall include \$500,000 each accident for Bodily Injury by Accident, \$500,000 each accident for Bodily Injury by Disease, and \$500,000 policy limit for Bodily Injury by Disease.

(ii) COMMERCIAL GENERAL LIABILITY INSURANCE: The Grantee shall procure and maintain during the life of this Franchise, Commercial General Liability insurance on a per occurrence basis with limits of liability not less than \$1,000,000 per occurrence and \$2,000,000 aggregate combined single limit; Personal Injury, Bodily Injury, and Property Damage. Coverage shall include the following extensions: (a) Contractual Liability, (b) Premises and Operations, (c) Products and Completed Operations, (d) Independent Contractors Coverage, (e) Personal and Advertising Injury, and (f) Explosion, Collapse and Underground (XCU), where applicable. Coverage shall be no less comprehensive and no more restrictive than the coverage provided by a standard form Commercial General Liability Policy (ISO CG 00 01 10 93) with standard exclusions "a" through "n." Any additional exclusions shall be clearly identified on the Certificate of Insurance and shall be subject to the review and approval of the City. The policy shall be endorsed to provide an Aggregate Per Location/Project Endorsement.

(iii) AUTOMOBILE LIABILITY INSURANCE: The Grantee shall procure and maintain during the life of this Franchise, Automobile Liability Insurance with limits of liability of not less than \$1,000,000 per occurrence combined single limit including Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.

(iv) UMBRELLA/EXCESS INSURANCE: The coverages specified in ii and iii above may be satisfied with a combination of primary and Umbrella/Excess Insurance. The Umbrella/Excess Insurance shall also be written on a per occurrence basis and shall include the same endorsement as required of the primary policy(ies).

(v) INSURANCE FOR OTHER LOSSES: The Grantee shall assume, during the life of this Franchise, full responsibility for all loss or damage from any cause whatsoever to any property brought onto City property that is owned or rented by the Grantee, or by any of the Grantee's employees, agents, subcontractors, suppliers or their employees; to the extent that such property is utilized in carrying out the provisions of this Franchise. The Grantee shall cause its insurance carrier providing physical damage insurance to the Grantee, to provide a waiver of the right of subrogation against the City.

(vi) **CHANGES IN COVERAGE, LIMITS, ENDORSEMENTS AND TERMS:** The City reserves the right to change the required coverages and the limits associated with coverages i, ii, iii, and iv above. The City's Risk Management Office shall annually review and modify, as the City deems necessary, any coverages, limits, endorsements, and terms. Such changes shall be based on then-current insurance industry practices and procedures.

(vii) **SUBCONTRACTORS:** The Grantee shall require that any of its agents and subcontractors who perform work and/or services pursuant to the provisions of this Franchise meet the same insurance requirements as are required of the Grantee.

(viii) **ADDITIONAL INSURED:** Except for Worker's Compensation, the insurance policies providing the coverages specified in ii, iii, and iv above shall include the "City of Des Moines, Iowa Additional Insured and Governmental Immunities Endorsements" in such form as it may be required by the City's Office of Risk Management. Copies of the currently approved form of these endorsements are attached.

(ix) **CANCELLATION OR MATERIAL CHANGE NOTICE:** The insurance policies providing the coverages specified in (i), (ii), (iii), and (iv) above shall include the "City of Des Moines Cancellation Notice Endorsement" in such form as it may be required by the City's Office of Risk Management. A copy of the current form of this endorsement is attached.

(x) **PROOF OF INSURANCE:** The Grantee shall provide to and maintain on a current basis with the City Certificate(s) of Insurance evidencing all required insurance coverage as provided in (i) through (iv) above utilizing the latest version of the ACORD form. The Certificate(s) of Insurance shall specify under "Description of Operations/Locations/Vehicle/Special Items" the title of the Franchise and that "Where required, Additional Insured, Governmental Immunities, Cancellation and Material Change, and Aggregate Per Location endorsements have been included as per attached." These endorsements shall be attached to the Certificate(s) of Insurance so as to evidence their inclusion in the coverages required. Any deductible or self-insured retention must be disclosed on the face of the Certificate of Insurance and must be accepted by the City.

3.6 Indemnification (Hold Harmless).

To the fullest extent permitted by law, the Grantee agrees to defend, pay on behalf of, indemnify, and hold harmless the City, its elected and appointed officials, employees, volunteers, and others working on behalf of the City against any and all claims, demands, suits, or loss, including any and all outlay and expense connected therewith, and for any damages which may be asserted, claimed, or recovered against or from the City, its elected and appointed officials, employees, volunteers, or others working on behalf of the City, by reason of personal injury, including bodily injury or death, and property damages, including loss of use thereof, which arises out of or is in any way connected or associated with the work and/or services provided by the Grantee pursuant to the provisions of this Franchise. It is the intention of the parties that the City, its elected and appointed officials, employees, volunteers, or others working on behalf of the City shall not be liable or in any way responsible for injury, damage, liability, loss, or expense resulting to the Grantee, its officers, employees, subcontractors, and others affiliated with the

Grantee due to accidents, mishaps, misconduct, negligence, or injuries either in person or property caused by the work and/or services performed by the Grantee under this Franchise.

The Grantee expressly agrees to pay the City for all damages caused to the City's premises resulting from the activities of the Grantee, its officers, employees, subcontractors, and others affiliated with the Grantee.

The indemnification obligations of Grantee are not limited in any way by the amount or type of damages or compensation payable by or for Grantee under Worker's Compensation, disability, or other employee benefit acts, acceptance of insurance certificates required under this Franchise, or the terms, applicability, or limitations of any insurance held by Grantee.

Grantor does not, and shall not, waive any rights against Grantee which it may have by reasons of the indemnification provided for in this Agreement, because of the acceptance by Grantor, or the deposit with Grantor by Grantee, of any of the insurance policies described in this Agreement.

The requirements of indemnification shall not be a waiver of any right that the Grantor would have to assert defenses on its own behalf under state or federal law.

The Grantor's indemnification obligations under this Agreement shall survive the expiration, cancellation, or termination of this Agreement.

3.7 Waiver of Subrogation.

To the extent permitted by law, the Grantee hereby releases the City, its elected and appointed officials, employees, volunteers, and others working on behalf of the City, from any and all liability or responsibility to the Grantee or anyone claiming through or under the Grantee by way of subrogation or otherwise, for any loss or damage to property caused by fire or other casualty, even if such fire or other casualty shall have been caused by the fault or negligence of the City, its elected and appointed officials, employees, volunteers, or others working on behalf of the City. This provision shall be applicable and in full force and effect only with respect to loss or damages occurring during the time of the Grantee's occupancy or use, and Grantee's policies of insurance shall contain a clause or endorsement to the effect that such release shall not adversely affect or impair such policies or prejudice the right of the Grantee to recover thereunder.

3.8 Security.

In addition to any other right of enforcement provided in the City's ordinances, the Grantee shall establish the following security to ensure performance of the Grantee.

(a) Amount. Within thirty (30) days of the effective date, Grantee shall establish and provide to Grantor, an irrevocable and unconditional letter of credit ("LOC") as security for the faithful performance by Grantee of all of its obligations under this Agreement. The LOC shall be One Hundred Fifty Thousand Dollars (\$150,000) which shall be with a financial institution

acceptable to the City and in a form acceptable to the City's Corporation Counsel. The LOC may be drawn on and shall be replenished as provided in this Section.

(b) Use. Grantor may draw on the LOC to ensure the Grantee's faithful performance of and compliance with this Agreement provided that Grantee has received prior written notice of determination of breach of this Agreement and thirty (30) days opportunity to cure, and further provided that if such draw is for the purpose of enforcing any liquidated damages obligations under 3.9 of this Agreement, all provisions of 3.9 have been met and no stay has been granted. Grantor's right to draw on the LOC hereunder, may include, by way of example and not limitation, if Grantee fails to pay City any fees or payments due hereunder, liquidated damages, or damages incurred by City by reason of any act or default of Grantee, or if Grantee fails to comply with any provisions of this Agreement which failure Grantor determines can be remedied by expenditure from the LOC. City shall notify Grantee of the amount and date of withdrawal. Grantee's recourse, in the event Grantor believes any draw upon the LOC is improper, shall be through legal action even after the LOC has been drawn upon. If Grantor's action or taking is found to be improper by any court of competent jurisdiction, Grantee shall be entitled to a refund of any improperly withdrawn funds plus interest and/or any other specific performance which such court or agency shall order.

(c) Restoration of LOC. Within fifteen (15) calendar days after City gives Grantee written notice that the LOC has been drawn upon, Grantee must take all steps required to restore the LOC to the original amount.

(d) Return of Fund. Grantee's obligation to maintain the LOC shall survive the termination of the Franchise, until all obligations to the City have been satisfied. However, if the Franchise terminates for any reason, and Grantee has ceased to provide service in City, and the City has determined that Grantee does not owe funds to the City and is not in default, the Grantee's obligations to maintain the LOC shall also terminate.

(e) Nothing herein shall be deemed a waiver of the normal registration, permit and bonding requirements made of all contractors working within the City's rights-of-way to the extent those charges can lawfully be applied to Grantee.

3.9 Liquidated Damages.

(a) Amounts. Because Grantee's failure to comply with provisions of this Agreement will result in injury to City, and because it will be difficult to estimate the extent of such injury, City and Grantee agree to the following liquidated damages for the following violations. These damages represent both parties' best estimate of the damages resulting from the specified injury. The liquidated damage amounts are in 1998 dollars and shall be increased each year by the increase in the U.S. Consumer Price Index for Urban Areas. Provided, however, the liquidated damage amounts shall first be increased from 1998 levels in the year that the CPI-U increase from 1998 levels equals or exceeds fifteen percent (15%). For example, if the CPI-U rises four percent (4%) in 1999, five percent (5%) in 2000, and six percent (6%) in 2001, then the liquidated damage amounts would be increased fifteen percent (15%) in 2002, and thereafter would increase annually.

(1) For failure to complete the upgrade required by Section 4.1 or failure to implement a single uniform channel lineup and offered services within the City by December 31, 1999: \$500/day for each day the violation continues, subject to the provisions of Section 3.9(b)(4).

(2) For failure to complete construction of the I-Net as required by Section 6.4: \$1,000/day for each day the violation continues which, at the City's sole discretion, may be in addition to damages set forth in Section 3.9(a)(1).

(3) For failure to comply with any public access, educational and governmental channels, programming or facilities requirements in this Agreement: \$250 for each violation for each day the violation continues.

(4) For failure to maintain a local office as required in Section 1.2: \$5,000 per month.

(5) For failure to submit or provide documents, records, information or reports requested to be provided: \$100/day for each day the violation continues.

(6) For all other violations of this Agreement for which actual damages may not be ascertainable up to: \$250/day for each violation for each day the violation continues.

(7) For delinquency in payment of Franchise Fees when due: \$100/day for each day the violation continues.

(b) Date of Violation, Notice. The date of violation will be the date of the event and not the date Grantee receives notice of the violation except in cases where Grantee did not know and could not reasonably have been expected to know that a violation occurred, in which case damages shall accrue from the date Grantee knew or should have known of the violation. Before attempting to recover liquidated damages, the City shall provide Grantee thirty (30) days written notice of a violation, and provide the Grantee with an opportunity at a public hearing of the City Council to show (1) that a violation did not in fact occur, (2) that the violation has been cured, or (3) that liquidated damages should not be assessed. If the violation has been cured, liquidated damages may only apply if the City finds the violation:

(1) Involves violation of a customer service standard.

(2) Involves willful or reckless acts or omissions.

(3) Involves violation of transfer provisions.

(4) Involves failure to complete the upgrade as required (Section 4.1) or to complete the I-Net as required (Section 6.4); provided, however, that no liquidated damages shall be assessed with respect for a period of up to 90 calendar days after December 31, 1999, if Grantee can show good cause for the delay.

(5) Involves a repeat of the specific violation.

(6) Is part of a class or pattern of violations where the Grantee had reason to know the class or pattern of violations existed, and failed to take the actions necessary to correct the class or pattern of violations or prevent the violations from recurring.

In any event, no liquidated damages shall be assessed unless the City has made a written finding of violation. Nothing herein shall prevent the City and Grantee from agreeing to waive damages for a cure period.

3.10 Relationship of Remedies.

(a) Remedies are Non-Exclusive. The remedies provided for in this Agreement are cumulative and not exclusive; the exercise of one lawful remedy shall not prevent the exercise of another lawful remedy, or the exercise of any rights of the City at law or equity, provided however, cumulative remedies may not exceed the total wrong involved. By way of example and not limitation, the collection of liquidated damages by City shall in no respect affect:

(1) Compensation owed to subscribers; or

(2) Grantee's obligation to comply with the provisions of this Agreement or Applicable Law.

(b) No Election of Remedies. Without limitation, the withdrawal of amounts from the LOC, or the recovery of amounts under the insurance, indemnity or liquidated damages provisions of this Agreement shall not be construed as any of the following: an election of remedies, a limit on the liability of Grantee under the Agreement for damages or otherwise; or an excuse of faithful performance by Grantee.

3.11 Termination of Franchise.

(a) Grounds for Revocation. In addition to any other lawful remedies the City may have, it reserves the right to revoke the Franchise and rescind all rights and privileges associated therewith in the event of a material breach of the Franchise. A material breach or cause for revocation, by way of example, would include:

1. If Grantee should default in the performance of any of its material obligations under the Agreement and fails to cure the default within sixty (60) days after receipt of written notice of the default from the City or such longer time as specified by the City.

2. If the Grantee should fail to provide or maintain in full force and effect the irrevocable letter of credit and insurance and indemnification coverages as required in the Agreement.

3. If a petition is filed by or against Grantee under the Bankruptcy Act, as amended, or any other insolvency or creditors' rights law, state or federal, and the Grantee shall fail to have it dismissed.

4. If a receiver, trustee or liquidator of the Grantee is applied for or appointed for all or part of the Grantee's assets.

5. If the Grantee makes an assignment for the benefit of creditors.
6. If the Grantee violates any order or ruling of the City, or any state or federal regulatory body having jurisdiction over the Grantee, unless the Grantee is lawfully contesting the legality or applicability of such order or ruling and has received a stay from the appropriate forum.
7. If Grantee repeatedly fails to meet the technical standards.
8. If the Grantee practices any fraud or deceit upon the subscribers, the City, or the general public.
9. If the Grantee's construction schedule is delayed later than the schedule contained in the Franchise or beyond any extended date set by the City -- which extended date shall be not more than 90 calendar days from December 31, 1999, if Grantee can show good cause therefor. Provided, however, that any termination of the Franchise based on delay in the construction schedule shall be void if Grantee can show good cause therefor and has in fact completed all construction and implemented uniform programming on or before June 30, 2000.
10. If Grantee misrepresented a material fact in the application for or negotiation of the Franchise or transfer application or in any other appearance before or document submitted to the City Council or to subscribers.
11. If the Grantee ceases to provide services over the cable communications system for seven (7) consecutive days for any reason within the control of the Grantee.
12. If the Grantee fails to comply with any material access provisions.
- 13 . If Grantee violates any material rule, order, regulation or determination of the City Council made pursuant to its police powers or any material provision of this Agreement.
14. If the Grantee evades any of the provisions of the Municipal Code enacted pursuant to Grantor's police powers or this Agreement, which by way of example could include packaging or bundling of services to reduce gross revenues for the purpose of reducing Franchise Fees payable under Section 3.2 of this Agreement.

(b) Procedure Prior to Revocation: The City shall give at least thirty (30) days written notice to the Grantee citing the reasons alleged to constitute cause for revocation, if the reason is of a nature that can be cured, set a reasonable time in which the Grantee must remedy the cause. If, during the thirty (30) day period or such longer period as the City may set, the cause shall be cured to the satisfaction of the City, the City may declare the notice to be null and void. If the Grantee fails to remedy the cause within the time specified or if the breach is of a nature that cannot be remedied, the City Council may, after public hearing and making a written finding of a material violation, revoke the Franchise. In any event, before the Franchise may be terminated, the Grantee shall be provided with an opportunity to be heard before the City Council.

(c) Effect of Pending Litigation: Unless a stay is issued by a court of appropriate jurisdiction, pending litigation or any appeal to any regulatory body or court having jurisdiction over the Grantee shall not excuse the Grantee from the performance of its obligations under this Agreement or other Applicable Laws. Failure of the Grantee to perform material obligations because of pending litigation or petition may result in forfeiture or revocation pursuant to the provisions of this Section.

(d) Restoration of Public and Private Property: In removing its plants, structures and equipment, the Grantee shall refill at its own expense, any excavation made by it and shall leave all public ways and places and private property in as good condition as existed prior to Grantee's removal of its equipment and appliances, without affecting the electric or telephone cables, wires or attachments. The City shall inspect and approve the condition of the public ways and public places and cables, wires, attachments and poles after removal. Liability insurance, indemnity, and the security fund provided in this Agreement shall continue in full force and effect during the period of removal.

(e) Restoration by City; Reimbursement of Costs: If the Grantee fails to complete any work required by subsection "d" above or any work required by other law or ordinance within the time established and to the satisfaction of the City, the City may cause such work to be done and the Grantee shall reimburse the City the costs thereof within thirty (30) days after receipt of any itemized list of such costs, or in the event of failure of Grantee to pay such costs, the City may recover such costs as provided from the LOC required in Section 3.8.

(f) Lesser Sanctions: Nothing shall prohibit the City from imposing lesser sanctions or censures than revocation.

(g) Expiration; Extended Operation: Upon the expiration or termination of the franchise, the City may, by resolution, on its own motion or request of the Grantee, require the Grantee to operate the franchise for an extended period of time not to exceed six (6) months from the date of any such resolution under the same terms and conditions as specified in this Agreement and as circumstances warrant. All provisions shall continue to apply to operations during an extension period. The City shall serve written notice at the Grantee's business office of intent to extend under this Section at least thirty (30) days prior to expiration of the original franchise or any extensions thereof.

3.12 Reservation of Rights.

Grantor and Grantee reserve all rights that they possess unless expressly waived herein; neither party waives any rights to any specific claim for any past or future obligation unless the nature of claim is specifically articulated herein.

3.13 Annual Report.

Grantee shall, upon written request of the Grantor, submit a written end of the year report to Grantor utilizing the format outlined in the Annual Performance Review Checklist attached hereto as Exhibit C.

3.14 Reports and Records.

(a) The Grantee shall manage all of its operations in accordance with a policy of keeping its documents and records open and accessible to the Grantor. Grantee shall provide all routine filings to Grantor. The Grantor shall have access to, and the right to inspect, any books and records of the Grantee which are reasonably related to and necessary for the administration or enforcement of the terms of this Agreement. The Grantee shall not deny the Grantor access to any such records on the basis that such records are under the control of any parent corporation, affiliated entity or a third party. The Grantor may, in writing, request copies of any such records or books and the Grantee shall provide such copies within ten (10) days of the transmittal of such request. Except where more than one copy would otherwise be required to be supplied or the materials are generally required to be supplied in more than one format, such as both in electronic and print, all reports and records required under this Section shall be furnished to the Grantor, upon request, at the sole expense of the Grantee. If the requested books and records are too voluminous, or for security reasons cannot be copied or removed, then the Grantee may request, in writing within five (5) days of the due date for the requested books and records, that the Grantor inspect them at Grantee's City business center.

(b) Grantee shall at all times maintain and provide Grantor, in whatever format, including electronic format, the Grantor may require and at the sole expense of the Grantee, full and complete plans, records and maps of Grantee's Cable System equipment installed or in use in the City, the provision of which shall not unduly discriminate against the Grantee.

3.15 Confidentiality.

To the extent not inconsistent with Applicable Law or any ordinance of general applicability, the Grantor agrees to treat as confidential any books and records that constitute proprietary or confidential information under federal or state law, to the extent the Grantee makes Grantor aware of such confidentiality. The Grantee shall be responsible for clearly and conspicuously stamping the word "Confidential" on each page that contains confidential or proprietary information, and shall provide a brief written explanation as to why such information is confidential under state or federal law. If the Grantor believes it must release any such confidential books and records in the course of enforcing this Agreement, or for any other reason, it shall advise the Grantee in advance so that the Grantee may take appropriate steps to protect its interests. If the Grantor receives a demand from any Person for disclosure of any information designated by the Grantee as confidential, the Grantor shall, so far as consistent with applicable law, advise the Grantee and provide the Grantee with a copy of any written request by the party demanding Access to such information within a reasonable time. Until otherwise ordered by a court or agency of competent jurisdiction, the Grantor agrees that, to the extent permitted by state and federal law, it shall deny Access to any of the Grantee's books and records marked confidential as set forth above to any Person.

3.16 Franchise Transfer.

(a) Grantee shall not voluntarily or involuntarily, by operation of law or otherwise, sell, assign, transfer, lease, sublet or otherwise dispose of, in whole or in part, the Franchise and/or cable

system or any of the rights or privileges granted by the Franchise, to any entity not controlled by Grantee's parent entity, without the prior written consent of the City and then only upon such terms and conditions as may be lawfully prescribed by the City, which consent shall not be unreasonably denied or delayed provided that any transferee shall agree to accept all of Grantee's obligations under this Agreement. Any attempt to sell, assign, transfer, lease, sublet or otherwise dispose of all or any part of the Franchise and/or cable system or Grantee's rights therein without the prior written consent of the City shall be null and void and shall be grounds for termination of this Agreement.

(b) Without limiting the nature of the events requiring the City's approval under this section, the following events shall be deemed to be a sale, assignment or other transfer of the Franchise and/or cable system requiring compliance with this section:

(i) the sale, assignment or other transfer of all or a majority of Grantee's assets or the assets comprising the cable system to any person;

(ii) the merger of the Grantee or any of its parents with or into another person (including the merger of Grantee or any parent with or into any parent or subsidiary corporation or other person) so as to create a new controlling interest in Grantee;

(iii) the consolidation of the Grantee or any of its parents with any other person so as to create a new controlling interest in Grantee;

(iv) the creation of a subsidiary corporation or other entity so as to create a new controlling interest in Grantee;

(v) the sale, assignment or other transfer of capital stock or partnership, membership or other equity interests in Grantee or any of its parents by its existing shareholders, partners, members or other equity owners so as to create a new controlling interest in Grantee;

(vi) the issuance of additional capital stock or partnership, membership or other equity interest by Grantee or any of its parents so as to create a new controlling interest in Grantee; and

(vii) the entry by the Grantee into an agreement with respect to the management or operation of the Grantee, any of Grantee's parents and/or the system or the subsequent amendment thereof so as to create a new controlling interest in Grantee.

The term "controlling interest" as used herein is not limited to majority equity ownership of the Grantee, but also includes actual working control over the Grantee or any parent of Grantee to the extent it results in a change in actual working control of Grantee, or, if applicable, any parent of Grantee and/or the system in whatever manner exercised.

(c) The City shall act upon any request for approval of such sale or transfer which includes or is accompanied by such relevant information as is necessary to conduct the City's due diligence on the proposed sale or transfer consistent with FCC Regulations, state, or federal law. (d) Grantee shall notify the City in writing of any foreclosure or any other judicial sale of all or a substantial

part of the property and assets comprising the cable system of the Grantee or upon the termination of any lease or interest covering all or a substantial part of said property and assets. Such notification shall be considered by City as notice that a change in control or ownership of the Franchise has taken place and the provisions under this section governing the consent of City to such change in control or ownership shall apply.

(e) For the purpose of determining whether it shall consent to such change, transfer or acquisition of control, the City may inquire into the qualifications of the prospective transferee or controlling party; and Grantee shall assist the City in any such inquiry. In seeking the City's consent to any change of ownership or control, Grantee shall have the responsibility of ensuring that the transferee completes an application in form and substance reasonably satisfactory to the City, which application shall include the information required under FCC Regulations, this Agreement and State and federal laws. An application, acceptable to the City, shall be submitted to the City not less than one hundred twenty (120) days prior to the date of transfer. The transferee shall be required to establish to the satisfaction of the City that it possesses the legal, technical (including operational), and financial qualifications to operate and maintain the system and that the transferee will agree to cure all defaults, if any, and will comply with all Franchise requirements for the remainder of the term of the Franchise. If, after considering the legal, financial and technical qualities of the transferee and determining that they are satisfactory, the City finds that such transfer is acceptable, the City shall permit such transfer and assignment of the rights and obligations of such Franchise as may be in the public interest. The consent of the City to such transfer shall not be unreasonably denied.

(f) Any financial institution having a security interest in any and all of the property and assets of Grantee as security for any loan made to Grantee or any of its affiliates for the construction and/or operation of the cable system must notify the City that it or its designee satisfactory to the Grantor shall take control of and operate the cable television system, in the event of a default in the payment or performance of the debts, liabilities or obligations of Grantee or its affiliates to such financial institution. Further, said financial institution shall also submit a plan for such operation of the system within thirty (30) days of assuming such control that will ensure continued service and compliance with all Franchise requirements during the term the financial institution or its designee exercises control over the system. The financial institution or its designee shall not exercise control over the system for a period exceeding one (1) year unless extended by the City in its discretion and during said period of time it shall have the right to petition the City to transfer the Franchise to another Grantee.

SECTION 4. SYSTEM UPGRADE

4.1 Upgrade.

Grantee shall immediately take all necessary steps to upgrade and/or rebuild, as appropriate, the existing Cable System to a capacity, exclusive of overhead capacity, of at least 110 analog video channels. Such Cable System upgrade and/or rebuild shall be completed no later than December 31, 1999. Completion of any required construction shall be defined in part as the ability to provide a uniform System capacity and programming to all Subscribers within the City.

4.2 Emergency Alert Capability.

Grantee shall immediately provide the System capability to transmit an emergency alert signal to all Subscribers, which at a minimum shall initially be in the form of an audio override capability to permit Grantor to interrupt and cablecast an audio message on all Channels simultaneously in the event of disaster or public emergency. The Grantor reserves the right, in its sole discretion, to prescribe rules designating other governmental entities the right to use this emergency alert capability; provided however, the Grantor shall advise the Grantee of and provide the Grantee with a copy of those rules.

4.3 Standby Power.

On or before December 31, 1999, Grantee shall provide standby power generating capacity at the cable communications System headend capable of providing at least twelve (12) hours of emergency supply. Grantee shall maintain standby power supplies at all hubs and node sites capable of providing emergency power within the standard limits of commercially available power supply units.

4.4 Technical Standards.

(a) Grantee shall construct, install, operate and maintain its system in a manner consistent with all Applicable Laws and, shall at a minimum, comply at all times with all applicable FCC Rules and Regulations, Part 76, Subpart K (Technical Standards), as may be amended from time to time. In addition, Grantee shall provide to the Grantor, upon request, written reports of the results of the Grantee's periodic proof of performance tests conducted pursuant to FCC standards and guidelines.

(b) All construction practices shall be in accordance with all applicable sections of the Occupational Safety and Health Act of 1970, as amended, as well as all other Applicable Laws.

(c) All installation of electronic equipment shall be of a permanent nature, durable and installed in accordance with the provisions of the National Electrical Code, as amended, and as may from time to time be amended.

(d) All of Grantee's plant and equipment, including, but not limited to, headend and distribution system, towers, house connections, structures, poles, wire, coaxial cable, fixtures, and appurtenances shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with City ordinances, good engineering practices, performed by experienced maintenance and construction personnel so as not to endanger or interfere with improvements the City may deem appropriate to make or to interfere in any manner with the rights of any property owner, or to unnecessarily hinder or obstruct pedestrian or vehicular traffic.

(e) Grantee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage, injury or nuisance to the public.

(f) If it appears from a number of similar complaints made or when there are circumstances indicative of unreliable and/or poor quality cable service being delivered to subscribers, the City Manager shall have the right and authority to compel the Grantee at the Grantee's own expense to test, analyze, and report on the performance of the system. Such report shall be delivered to the City Manager no later than 14 days after the City Manager formally notifies the Grantee of its need to review performance and shall include the following information; the nature of the complaints which precipitated the special tests; the specific system components which were tested, the equipment used and procedures employed in said testing; the results of such tests; and the method in which the subscriber complaints were resolved.

(g) The City may, should circumstances appear to merit such attention, require that such tests and analyses be supervised and/or conducted by an independent professional engineer with the requisite expertise in cable television operations who is not a member of the staff of the Grantee. The engineer responsible for the testing shall sign all records of the special tests and shall prepare a report interpreting the results of the tests and recommending corrective actions to be taken by the Grantee. The Grantee shall forward to the City Manager such records without revisions, deletions, or substitutions.

(h) Grantee's failure to maintain or to remedy its system to achieve specified technical standards shall constitute a material breach of the Franchise.

4.5 Right of Inspection.

In addition to any other right that Grantor shall have under any ordinance of general applicability for regulation of its right-of-way, Grantor shall have the right to inspect all construction, reconstruction or installation work performed by Grantee under the provisions of this Agreement to ensure Grantee's compliance.

4.6 Periodic Evaluation, Review, and Modification.

(a) The City may require, in its sole discretion, that the Grantee participate in evaluation sessions with the City during the term of this Agreement; provided, however, Grantee shall be given thirty (30) days prior written notice of such evaluation sessions and there shall not be more than one (1) evaluation session initiated during any calendar year.

(b) Topics which may be discussed at any evaluation session include, but are not limited to, rates, channel capacity, the System performance, System upgrade, programming, PEG channels, municipal uses of the System, Subscriber complaints, judicial rulings, FCC rulings, and any other topics the City or Grantee may deem relevant.

(c) During an evaluation session, Grantee shall fully cooperate with the City and shall provide without cost such information and documents as the City may reasonably request to perform the evaluation.

(d) As a result of an evaluation session, the City or Grantee may determine that an amendment in the terms of this Agreement may be desirable. If such a determination is made, Grantee and the

City agree, in good faith, to review the terms of the Agreement and consider amending it accordingly.

4.7 Placement and Use of Poles and Use of Grantee's Facilities.

a. Where poles or other wire-holding structures already serving the City are available for use by any Grantee, but Grantee does not make arrangements for such use, the City may require Grantee to use such poles and structures if the City determines that the public convenience would be enhanced thereby and if the terms of the use available to Grantee are just and reasonable.

b. Where a public utility serving the City desires to make use of the poles or other wire-holding structures of Grantee but agreement with Grantee cannot be reached, the City may require Grantee to permit such use for such consideration and upon such terms as the City shall deem to be just and reasonable, if the City determines that the use would enhance the public convenience and would not unduly interfere with Grantee's operations.

c. The City shall have the right to install and maintain, free of charge, upon the poles and within the underground and conduits owned or available to Grantee, any wires and fixtures desired by the City to the extent that such installation and maintenance does not interfere with existing operations of Grantee.

d. Grantee shall not erect or maintain any poles or aerial wires or cables within any underground districts which have been established by the City or which may hereafter be established by the City. Furthermore, no poles or aerial wires or cables shall be installed or maintained in any area where other utilities are required by law to be underground or where such other utilities are already installed underground.

e. In those areas of the City where Grantee's cables are located on the above-ground transmission or distribution facilities of the public utility providing telephone or electric power service, and in the event that the facilities of both such public utilities subsequently are required to be placed underground, then Grantee likewise shall construct, operate, and maintain its transmission and distribution facilities underground, at Grantee's cost.

SECTION 5. SERVICES AND PROGRAMMING

5.1 Services and Programming.

Grantee shall, at the time this Franchise is granted, and thereafter annually on the anniversary of the effective date, provide the information requested in Exhibit D. Additionally, Grantee shall provide at all times the Grantor with a list of programming services and other services offered. Except as provided in Section 6.1(c), Grantee shall not alter the location of or reduce programming or other services without thirty (30) days prior written notification to the Grantor and System Subscribers except in the case of loss of programming services beyond the control of Grantee.

SECTION 6. SUPPORT FOR LOCAL USAGE

6.1 Channels and Support.

(a) Grantee shall provide without charge:

(i) one specially designated noncommercial public access channel available to the public on a first come, nondiscriminatory basis, and

(ii) one specially designated channel to the City of Des Moines, and

(iii) one specially designated channel to the Des Moines Independent Community School District, and

(iv) one specially designated channel for higher education which shall be programmed by a consortium of representatives of institutions of higher learning ("The College Consortium").

(b) If, at any time after the cable system has been upgraded beyond a 330 Megahertz system, or December 31, 1999, whichever earlier occurs, any one of the channels referenced herein becomes fully utilized and the designated users of that channel demonstrate such full utilization, the Grantee shall provide up to one additional channel to augment that channel which is fully utilized.

For the purposes of this section, "Fully Utilized" shall mean that such channel has or will have the programming for at least 896 hours in a sixteen (16) week period, which hours may include up to 5.5 repeats of the same material but of which not more than 20% of such hours can be non-interactive character-generated billboard programming. Grantee shall not be required to provide more than an additional 4 channels, making a total of a maximum of 8 channels for the aforementioned purposes.

(c) All channels required for public access, City of Des Moines, Des Moines Independent Community School District, or higher education/colleges shall be located on the Basic Service tier (or its equivalent) and available to all subscribers. Such channels shall not be relocated from their current positions arbitrarily, and in any event prior to any relocation, Grantee shall provide thirty (30) days written notice to Grantor and affected entities. If such channels are relocated on the channel line-up, Grantee shall pay all reasonable expenses to each affected entity attributable to relocation when Grantee relocates the channel on the line-up.

(d) Grantee shall provide live cable casting capability from at least the facilities specified in Exhibit F and shall maintain, and as necessary upgrade, live cable casting capability to ensure the signal quality comparable to that otherwise available on the subscriber network throughout the term of the Franchise.

(e) Grantee shall cooperate with the City in its efforts to provide enhanced access to City Council programming for the hearing impaired.

(f) Grantee shall provide to Grantor within thirty (30) days of the effective date of this Agreement, in addition to the channels and facilities provided in Exhibit F to this Agreement, the

sum of \$300,000 capital support to facilitate Des Moines City government cable casting. Thereafter, Grantee shall further provide and pay to Grantor an additional sum of \$300,000 in capital support not later than March 31, 1999. Grantor shall retain title to any and all PEG equipment and facilities purchased with or otherwise acquired with funding made available by Grantee in accordance with this Franchise. This funding and support shall not be deemed to be "Franchise Fees" pursuant to Section 3.2 of the Agreement; and

(g) Grantee shall allow the Grantor to place bill stuffers in Grantee's Subscriber statements at no cost, no less frequently than twice per year upon the written request of the Grantor and at such times that the placement of such materials would not materially and adversely effect Grantee's cost for the production and mailing of such statements. Grantee shall also make available access information provided by Grantor in Subscriber packets at the time of Installation and at the counter in the System's business office within the Service Area. Grantee shall also distribute, at no charge to Grantor, through the advertising insertion equipment, 28 weekly promotional and awareness commercial spots at randomly selected "run of schedule" times produced at the Grantor's cost and submitted by the Grantor in a format compatible with such advertising insertion equipment once Grantee has acquired and activated such capability. Grantee shall also provide a listing of the known programming to be cablecast on PEG access Channels to the City and the media; and shall make that listing available to customers.

6.2 Public Access Rules.

Grantee shall facilitate the operation of the Public Access channel(s) and shall establish reasonable rules for programmers to use the Public Access Channel(s). Users of Public Access must meet reasonable eligibility requirements. Public Access users shall deliver programming material to Grantee for scheduling and playback in accordance with reasonable rules published by Grantee, which rules shall not be designed or implemented to discourage Public Access programming. Grantee's operating personnel shall be available to Public Access users from at least 8 a.m. to 10:30 p.m. seven days a week in the event of an operational concern.

6.3 Service to Government and School Buildings.

The Grantee shall also provide installation, equipment, and non-premium service without charge to all public, primary, and secondary schools and to all municipal buildings (whether owned or leased) located within the City. In the case of installation of service to a previously unserved school or government facility, the recipient entity shall pay the incremental cost of installation to the previously unserved facility beyond 200 feet from the cable distribution point. And further provided that if there is not a 24-hour weather programming channel offered on a non-premium basis, Grantee shall provide free of charge the necessary service and equipment to all City of Des Moines and Des Moines Independent School District locations in order for them to receive whatever channel/tier includes 24-hour weather programming.

6.4 Institutional Network.

(a) Grantee shall provide and make available materials and in-kind services for the development of Grantor's Institutional Network up to a value of \$1,500,000.00 in lieu of Grantee's providing

an Institutional Network and services. The value of such material and support shall not be deemed to be "Franchise Fees" pursuant to Section 3.2 of the Agreement. Such materials and in-kind services shall be limited to the provision and installation of a minimum of four (4) strands of single-mode fiber to Grantee's nearest pole or pedestal serving the facilities identified in Exhibit G. Grantee shall also provide to Grantor a reel or reels of fiber equal in length to 75 feet per facility served as shown in Exhibit G.

(b) Grantee shall, to the maximum extent possible, incorporate the Grantor's network needs into its System design to permit network communications between such facilities and the City's Data Center located at the Argonne Armory. Grantee shall consult with the Grantor as may reasonably be required to maximize the benefit to the City of the materials and in-kind service specified herein.

(c) Grantee shall provide the materials and in-kind service specified herein, at the same time as the System Upgrade specified in Section 4.1 is constructed. Provision of the materials and in-kind services performed in concert with construction of the System Upgrade shall be charged against the financial limitation specified in this section at the incremental cost required to furnish such service.

(1) Incremental cost shall be considered as the additional direct cost incurred by the Grantee to provide the additional strands of fiber for Grantor's use when such fiber is contained in a sheath owned by the Grantee, or is attached to the same pole as other fiber or copper cable used by the Grantee, or which passes through conduit used by the Grantee. Incremental cost shall also include the direct additional cost incurred by Grantee to extend such fiber from Grantee's fiber cable plant to Grantor's nearest pole or pedestal serving the facilities identified in Exhibit G.

(2) Installation of fiber to facilities which cannot reasonably be served during the System Upgrade, or which can be served at a lower direct cost by extending fiber dedicated to Grantor's use from some other appropriate site shall be charged against the financial limitation at the direct cost required to perform such installation.

Grantee shall provide to Grantor, in a timely manner, such cost information, including prices bid by contractors to accomplish installation of fiber to each facility shown on Exhibit G, as may reasonably be required by Grantor to maximize the benefit to the City of the in-kind service specified herein. Grantee agrees to make available to the City, the Grantee's books and records necessary for the City to confirm Grantee's costs associated with its provision of materials and in-kind services specified herein.

(d) The City may specify additional locations to be served by the Institutional Network as the City's needs require and within the \$1,500,000 limit of materials and in-kind service; provided however, that if the City specifies a location that is more than 750 feet from the then-existing subscriber network or the network serving the locations identified in Exhibit G, the City shall pay the actual cost of extending Institutional Network service to the facility to the extent that an extension beyond 750 feet is required.

(e) Grantee shall provide to the City an indefeasible right of use for all fiber provided and installed pursuant to this Section 6.4 whether said fiber exists in a sheath owned by the Grantee or is in a sheath installed separately for the purpose of constructing the Grantor's Institutional Network. In the event of a transfer of ownership of the system by the Grantee, the indefeasible right of use of such fiber thereto shall be retained by the City.

(f) Grantor shall activate, control, and make use of the fiber provided and installed pursuant to this Section for its Institutional Network; provided however, that the Institutional Network and its capacity shall only be used for public purposes and shall not be sold, leased, or otherwise permitted to be used for commercial or for-profit purposes.

(g) Grantee shall maintain and repair as necessary all fiber provided and installed for the Grantor's Institutional Network when such fiber is contained in a sheath owned by the Grantee, or is attached to the same pole as other fiber or copper cable used by the Grantee, or which passes through conduit used by the Grantee. If repairs to both Grantor's and Grantee's fibers are necessary, Grantee shall accomplish those repairs as part of the same process and at the same time it accomplishes repairs of its own fiber. If only fiber provided as in-kind service by Grantee requires repair, Grantee shall repair such fiber no later than the first business day following detection of the need for repair. Any fiber installed separately for the express purpose of connecting and identified facility to the Institutional Network, where such fiber is in a separate sheath and does not occupy underground conduit owned by the Grantee or which is not attached to a pole used by the Grantee for its own cable plant shall be maintained and repaired as necessary by the Grantor or its agent.

(h) Grantee shall turnover each segment of the provided and installed fiber for Grantor's Institutional Network as soon as any work needed to complete that segment is done. Grantee shall complete construction described herein to all locations on Exhibit G and turn it over to the Grantor no later than 18 months from the effective date of this Agreement.

(i) Grantor shall furnish to Grantee, upon completion of the construction of the Institutional Network, a strand map showing the location and connection points of all fiber installed for the Institutional Network.

6.5 Grantor's Discretion to Reduce or Rebate Support.

In the event the City issues additional cable television franchises, the Grantor shall rebate or reduce the Grantee's obligations hereunder if and to the extent that substantially equivalent obligations are not required in any additional cable television franchises that are granted subsequent to this Agreement.

SECTION 7. REGULATION

7.1 Rate/Service Regulation.

The City reserves the right to regulate rates and services to the extent consistent with federal law.

7.2 Complaint Procedure.

- (a) The Grantor, or his or her designee, shall be responsible for the City's continuing administration of the Franchise, including Grantee's complaint procedures.
- (b) The Grantee shall establish standard procedures for receiving, acting upon, and resolving subscriber complaints which procedures shall be in writing and filed with the Grantor's office. The Grantee shall furnish a notice of such procedures to each subscriber at the time of initial subscription to the system.
- (c) The Grantee shall keep at its offices a maintenance service log which records the nature of each service complaint, the date it was received, and the disposition of said complaint, including the date of resolution. This log shall be made available upon request for inspection by the Grantor. All service complaint records shall be retained on file for a period consisting of the most recent two years.

8. MISCELLANEOUS

8.1 Applicable Law, Federal, State and City Jurisdiction

- (a) Consistent with City, state and federal law, this Agreement and all orders or rulings hereunder shall be construed in such a manner so as not to unduly discriminate against Grantee to the benefit of Grantee's competitors or potential competitors.
- (b) Subject to all Applicable Law, in the event that the State or federal government discontinues regulation in any area of cable communications over which it currently exercises jurisdiction in such manner as to expressly expand rather than limit municipal regulatory authority, Grantor may, if it so elects, adopt rules and regulations in these areas to the extent permitted by law.
- (c) In the event of a conflict with any ordinances of the City, the provisions of the Franchise shall control. The rights of the Grantee are subject to the police powers of the City to adopt and enforce. The Grantee shall comply with all ordinances enacted by the City pursuant to that power.
- (d) Grantee shall not be relieved of its obligation to comply with any Ordinance or any of the provisions of this Agreement by reason of any failure of the City to enforce prompt compliance.
- (e) Notwithstanding the provisions of Section 6.5 hereof and Applicable Laws, any additional franchises or authorizations to any Person for similar uses of rights-of-way, to the extent Grantor may legally do so, shall be on terms, related to actual physical use and occupation of such right-of-way, no less burdensome and providing benefits no greater than those set forth herein.

8.2 Acknowledgment

In entering into this Agreement, the Grantee and Grantor expressly acknowledge and agree that each of their obligations hereunder have been knowingly, voluntarily and intelligently entered into. Grantee acknowledges and agrees that any capital costs required by this Agreement shall not be construed as Franchise Fees pursuant to Section 3.2 of this Agreement. Grantee further represents that it has no current intention to reflect such costs as a separate item on subscriber's bills.

8.3 Force Majeure

In the event Grantee's performance of any terms, conditions or obligations required by this Franchise is prevented by a cause or event not within Grantee's control, such inability to perform shall be deemed excused for the period of such inability and no penalties or sanctions shall be imposed as a result thereof. For the purpose of this section, causes or events not within the control of the Grantee shall include, without limitation, acts of God, strikes, sabotage, riots or civil disturbances, restraints imposed by order of a governmental agency or court, failure or loss of utilities, explosions, acts of public enemies, and natural disasters such as floods, earthquakes, landslides and fires.

8.4. Entire Agreement

This Franchise constitutes the entire agreement between the parties and supersedes any and all previous agreements of whatever nature between the parties with respect to the subject matter. This Franchise or Grantee's obligations hereunder shall not be changed, amended or supplemented except by an agreement in writing signed by both parties.

IN WITNESS WHEREOF, Grantor and Grantee have executed this Agreement the day, month and year first-above written.

CITY OF DES MOINES, IOWA

By: _____

Mayor

(SEAL)

Attest: _____

City Clerk

Approved as to Form:

Bruce E. Bergman, Corporation Counsel

HERITAGE CABLEVISION, INC.

d/b/a TCI OF CENTRAL IOWA

(Corporate Seal)

By: _____

John M. Margeson

Regional Vice President

Attest: _____

STATE OF _____)

) ss.

COUNTY OF _____)

The foregoing instrument was acknowledged before me on _____, 19__, by
_____, the _____ of the City of Des Moines, Iowa,
on behalf of the City.

Notary Public

STATE OF _____)

) ss.

COUNTY OF _____)

The foregoing instrument was acknowledged before me on _____, 19__, by
_____, the _____ of the Heritage Cablevision, Inc. d/b/a

TCI of Central Iowa on behalf of the Company.

Notary Public

EXHIBIT A

OWNERSHIP

HERITAGE CABLEVISION, INC.

is a wholly owned subsidiary of Heritage Communications, Inc.

Heritage Communications, Inc. is a wholly owned subsidiary of

TCI Communications, Inc.

TCI Communications, Inc. is owned 98% by Tele-Communications, Inc.

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EXHIBIT C

ANNUAL PERFORMANCE REVIEW CHECKLIST

Check Where

Applicable

1. RATES AND CHARGES

No change

Changed

Notices sent to City and subscriber

Changes in rates and costs identified by attachment

Change "reasonable" and consistent with

the standards prescribed by the FCC

Other (describe in attachment)

2. PROGRAMS AND SERVICES

No change in programs and services

New programs and services added

Identify new programs and services and
decision for introduction

Mix, level and quality of programs is
not changed

The programs and service changes meet
demand expressed in customer satisfaction
surveys

Other (describe in attachment)

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3. PUBLIC, GOVERNMENTAL AND EDUCATIONAL ACCESS

Access Rules in force

No changes

Changes - update provided

Personnel, equipment and facilities

No changes -

Changes - update attached

Programs and Services - summary attached

Other highlights - summary attached

4. CUSTOMER SERVICE

Customer service requirements complied with

Summary of complaints (attached)

System outages summary (attached)

Description of new customer services,
promotions (attached)

Subscriber satisfaction survey

-undertaken

-form/copy

Results of annual subscriber satisfaction survey

with comment on meeting needs identified (attached)

5. FILINGS WITH FCC

Summary of all filings with FCC described

in attachment

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6. PERFORMANCE TEST IN FRANCHISE COMPLETED

Summary of performance test results (attached)

7. FRANCHISE FEE PAYMENTS MADE

8. SUPPORT - FUNDING

9. COMPLETION OF CONSTRUCTION

Upgrade/rebuild (summary attached)

New technologies incorporated into System

Channel capacity increased

Service extended to new areas

Other

10. NEW SERVICES

No Changes

Services other than programming made

available in the subscriber network or

institutional network (summary attached)

11. TERMS AND CONDITIONS IN THE FRANCHISE AGREEMENT HAVE BEEN COMPLIED WITH

Summary attached of outlining incomplete

matters requiring action by Company

Company participation in PEG programming user studies

(summary attached)

All insurance, bonds and deposits are

updated and filed with City

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12. OTHER PERFORMANCE HIGHLIGHTS OR PLANS TO BE INTRODUCED WITHIN THE NEXT TWELVE (12) MONTHS (SUMMARY ATTACHED)

13. FINANCIAL AUDIT INFORMATION

Copy Of Annual Report

Dated this _____ day of _____, _____, by _____, a
duly authorized Officer of _____.

EXHIBIT E

SERVICE TO SCHOOL/GOVERNMENT

City of Des Moines

Facility Locations

Argonne Armory 602 E. 1st St.

City Hall 400 E. 1st St.

Fire Station 1 900 Mulberry St.

Fire Station 2 1727 E. Walnut St.

Fire Station 3 2458 Easton Blvd.

Fire Station 4 917 University Ave.

Fire Station 5 711 42nd St.

Fire Station 6 1919 SE 6th St.

Fire Station 7 3500 E. 12th St.

Fire Station 8 1249 McKinley Ave.

Fire Station 9 4800 Douglas Ave.

Central Library 100 Locust St.

East Library 2559 Hubbell Ave.

South Library 1111 Porter Ave.

North Library 3516 5th Ave.

Franklin Library 5000 Franklin Ave.

Forest Avenue Library 1326 Forest Ave.

Parks and Recreation 3226 University Ave.

Parks Service Center 405 SE 20th St.

Blank Park Zoo 7401 SW 9th St.

DMPD Main Station 25 E. 1st St.

DMPD Crime Prevention 106 SE 1st St.

DMPD Tactical Unit 103 SE 2nd St.

DMPD Academy 433 SE Army Post Rd.

Animal Control Shelter 1615 SE 14th St.

Public Works 216 SE 5th St.

WWTP (WRA) 3000 Vandalia Rd.

DM Airport 5800 Fleur Dr.

City Garage 212 SE Raccoon Ave.

DM Waterworks 2201 Valley Dr.

Waveland Golf Course 49th & University

Grandview Golf Course E. 29th & Arthur

Blank Golf Course 711 County Line Rd.

Glendale Cemetery 4909 University

Laurel Hills Cemetery 3601 E. Court Ave.

Woodland Cemetery 2019 Woodland Ave.

DHS Royal View 1101 Crocker St.

DHS Maint. 23 SW 6th St.

SE Community Center 2501 Maury St.

Four Mile Comm. Center 3711 Easton Blvd.

Logan Community Center 1740 E. Garfield St.

Woodland Wilke Ctr. 944 18th St.

Pioneer-Columbus Ctr. 2100 SE 5th St.

Model Cities Ctr. 1251 12th St.

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Des Moines Public Schools

Facility Locations

Central Campus 1800 Grand Ave.

East HS 815 E. 13th St.

Hoover HS 4800 Aurora Ave.

Lincoln HS 2600 SW 9th St.

North HS 501 Holcomb Ave.

Roosevelt HS 4419 Center St.

Scavo HS 1000 SW Porter Ave.

Van Meter 710 28th St.

Brody Middle 2501 Park Ave.

Callanan Middle 3010 Center St.

Casady 1801 16th St.

Goodrell Middle 3300 E. 29th St.

Harding Middle 203 E. Euclid Ave.

Hiatt Middle 1214 E. 15th St.

Hoyt Middle 2700 E. 42nd St.

McCombs Middle 201 SW 80th Ave.

Meredith Middle 4827 Madison Ave.

Merrill Middle 5301 Grand Ave.

Orchard Place 925 Porter Ave.

Pace Middle 1000 Porter Ave.

Pace/Stop 4111 Hubbell Ave.

Weeks Middle 901 E. Park Ave.

Grounds Maint. 1800 E. Euclid Ave.

Computer Repair 1915 Prospect Rd.

Aviation Lab 2610 McKinley

Adams 3720 E. 29th St.

Brooks 2124 Des Moines St.

Cattell 3101 E. 12th St.

Cowles 6401 College Ave.

Douglas 3800 E. Douglas Ave.

Downtown School 501 Locust St., Suite 200

Edmunds 1601 Crocker St.

Findley 3000 Cambridge St.

Garton 2820 E. 24th St.

Granger 101 E. Leach St.

Greenwood 316 37th St.

Hanawalt 225 56th St.

Hillis 2401 56th St.

Howe 2900 Indianola Ave.

Hubbell 800 42nd St.

Jackson 3825 Indianola Ave.

Jefferson 2425 Watrous Ave.

King 1849 Forest Ave.

Longfellow 1101 E. 6th Ave.

Lovejoy 801 E. Kenyon Ave.

Lucas 1535 Capitol Ave.

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Madison 806 E. Hoffman St.

Mann 1001 Amos Ave.

McKee 2115 E. 39th St.

McKinley 1610 SE 6th St.

Mitchell 111 Porter Ave.

Monroe 2250 30th St.

Moore 3725 52nd St..

Moulton 710 College Ave.

Oak Park 3928 6th Ave.

Park Avenue 3141 SW 9th St.

Perkins 4301 College Ave.

Phillips 1701 Lay St.

Pleasant Hill 4801 E. Oakwood Dr.

Rice 3001 Beaver Ave.

Samuelson 3929 Bel-Aire Rd.

Smouse 2820 Center St.

Stowe 1411 E. 33rd St.

Studebaker 300 E. County Line Rd.

Wallace 1401 E. 12th St.

Watrous 6430 SW 14th St.

Willard 2941 Dean Ave.

Windsor 5912 University Ave.

Woodlawn 4000 Lower Beaver Rd.

Wright 5001 SW 14th St

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EXHIBIT F

FACILITIES TO BE PROVIDED WITH PROGRAM ORIGINATION CAPABILITY:

Botanical Center 909 E River Drive

City Hall 400 E 1st Street

Central Campus 1800 Grand Avenue

Sec Taylor Stadium

DMACC Urban Campus

Drake University

And an additional 2 locations to be identified in the future subject to Section 6.3 of this Agreement

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EXHIBIT G

INSTITUTIONAL NETWORK SERVICES

Institutional network to public buildings and/or institutions as follows:

City of Des Moines

Facility Locations

Argonne Armory 602 E. 1st St.

Fire Station 1 900 Mulberry St.

Fire Station 2 1727 E. Walnut St.

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Fire Station 4 917 University Ave.

Fire Station 5 711 42nd St.

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Parks Service Center 405 SE 20th St.

Blank Park Zoo 7401 SW 9th St.

DMPD Crime Prevention 106 SE 1st St.

DMPD Tactical Unit 103 SE 2nd St.

DMPD Academy 433 SE Army Post Rd.

Animal Control Shelter 1615 SE 14th St.

Polk County Jail 6th Ave. & Mulberry

WWTP (WRA) 3000 Vandalia Rd.

DM Airport 5800 Fleur Dr.

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Laurel Hills Cemetery 3601 E. Court Ave.

Woodland Cemetery 2019 Woodland Ave.

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DHS Maint. 323 SW 6th St.

Parking Ramp 3rd & Court

Parking Ramp 4th & Grand

Parking Ramp 5th & Keo

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Parking Ramp 5th & Walnut

Parking Ramp 7th & Grand

SE Community Center 2501 Maury St.

Four Mile Community Center 3711 Easton Blvd.

Logan Community Center 1740 E. Garfield St.

Woodland Wilke Community Ctr. 944 18th St.

Pioneer-Columbus Community Ctr. 2100 SE 5th St.

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Hoyt Middle 2700 E. 42nd St.

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Pace/Stop 4111 Hubbell Ave.

Weeks Middle 901 E. Park Ave.

Grounds Maintenance 1800 E. Euclid Ave.

Computer Repair 1915 Prospect Rd.

Aviation Lab 2610 McKinley

Samuelson 3929 Bel-Aire Rd.

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Sec. 2. A copy of all Exhibits to the Franchise Agreement shall be maintained on file and available for public inspection in the office of the City Clerk.

Sec. 3. Ordinance No. 10,227 passed November 1, 1982 and effective February 3, 1983, is hereby repealed.

Sec. 4. This Ordinance shall be in full force and effect from and after October 5, 1998.

FORM APPROVED:

Susan A. Low

Assistant City Attorney