18652

05-172 Introduce: 11-7-05

ORDINANCE NO. 18652

AN ORDINANCE granting a cable communication facility franchise to Time Warner Entertainment-Advance/Newhouse Partnership, dba Time Warner Cable to provide cable television services and to maintain a cable communication facility within the City of Lincoln pursuant to and subject to the provisions of the Lincoln Municipal Code.

BE IT ORDAINED by the City Council of the City of Lincoln, Nebraska:

Section 1. Pursuant to the Cable Communications Ordinance of the Lincoln Municipal Code, the Cable Television Franchise Agreement between the City of Lincoln and Time Warner Entertainment-Advance/Newhouse Partnership dba Time Warner Cable, attached hereto and marked as Exhibit "A" and made a part hereof by reference, is hereby authorized and approved and the Mayor is hereby authorized and directed to execute said Franchise Agreement on behalf of the City.

Section 2. That this ordinance shall take effect and be in force from and after its passage and publication according to law.

See further Council Proceedings on next page.

Introduced by:

AYES: Cook, Eschliman, Marvin, McRoy, Newman, Svoboda; NAYS: Camp.

Approved as to Form & Legality:

City Attorney

Approved this 30 day of Nov, 2005:

Mayor

PASSED

NOV 28 2005

BY CITY COUNCIL

05-172

<u>November 28, 2005 Council Proceedings:</u>

MARVIN Moved to Amend Bill No. 05-172 to turn off the PEG channels (community access channels).

Seconded by Cook & **LOST** by the following vote: AYES: None; NAYS: Newman, Svoboda, Camp, Cook, Eschliman, Marvin, McRoy.

GENERAL FACT SHEET **BILL NUMBER** 05-172

BRIEF TITLE	APPROVAL DEADLINE	REASON
Time Warner Cable		
Franchise Agreement		

DETAILS		POSITIONS/RECOMMENDATIONS
This is a 15 year franchise agreement to provide cable television services within the City of Lincoln. The last franchise expired in September of 2000. There is a continued requirement to pay 5% of gross revenues to the City as a franchise fee. This agreement provides a Government/Education grant to be used for government and education access purposes. It provides for continued support of public access. There is the provision of fiber monies for the City to use for its internal institutional network. There is also a variety of other provisions dealing with Surety issues, Reports, Right-of-Way management issues, Termination provisions, Abandonment provisions, Transfer provisions, etc.	Sponsor	Law
	Program Departments, or Groups Affected	
	Applicants/ Proponents	Applicant Steve Huggenberger City Department Law Other
Discussion (Including Relationship to other Council Actions)	Opponents	Groups or Individuals Basis of Opposition
	Staff Recommendations	x For ❑ Against Reason Against
	Board or Commission Recommendation	BY ❑ For ❑ Against ❑ No Action Taken ❑ For with revisions or conditions (See Details column for conditions)
	CITY COUNCIL ACTIONS (For Council Use Only)	❑ Pass ❑ Pass (As Amended) ❑ Council Sub. ❑ Without Recommendation ❑ Hold ❑ Do not Pass

DETAILS	POLICY/PROGRAM IMPACT	
	POLICY OR PROGRAM CHANGE	❑ NO ❑ YES _____ _____ _____
	OPERATIONAL IMPACT ASSESSMENT	_____ _____ _____ _
	FINANCES	
	COST AND REVENUE PROJECTIONS	COST of total project: $ COST of this Ordinance/ Resolution $
		RELATED annual operating Costs $
		INCREASE REVENUE EXPECTED/YEAR $
	SOURCE OF FUNDS	CITY [Approximately] _____$_____%__ _____$_____%__ _____$_____%__ NON CITY [Approximately] _____$_____%__ _____$_____%__ _____$_____%__
	BENEFIT COST ❑ Front Foot Assessment ❑ Square Foot	Average $_____ $_____

APPLICABLE DATES:

FACT SHEET PREPARED BY:

REVIEW BY:

REFERENCE NUMBER

CABLE TELEVISION FRANCHISE AGREEMENT SUMMARY

Section 1. Definition sections

Standard definitions with the exception of the Gross Revenues definition. The determination of gross revenues will not be guided by GAAP principles (Generally Accepted Accounting Principles) but with specific inclusions. Part of this definition was agreed to in conjunction with the settlement of the audit case that is presently underway in federal court.

Section 2. Grant of Agreement

-15 year nonexclusive franchise

-Section 2.6 significant. Other cable franchises required to have same burden taken as a whole as this agreement.

- -Same service area, same contribution to city fiber, same PEG
- -No discrimination against Time Warner if LES gets into the business
- -City retains police power abilities

-Obligation to offer service to every person within the City

Section 3. Franchise Fee

-Franchise Fee will continue to be 5% of gross revenue

-Audits can occur no more than once every 3 yrs. If audit identifies an amount owed greater than 4%, TW pays for audit

Section 4. Administration and Evaluation

-Performance evaluations may be conducted annually by City or City's designee

Section 5. Financial and Insurance Requirements

-Insurance requirements updated

-Letter of Credit raised to $100,000

-Method for calling on letter changed slightly

Section 6. Customer Service Standards

-Continuation of using the Federal Customer Service Standards

Section 7. Reports

-Access to TW records still maintained

-TW to provide semi-annual reports on 7.3 (B)

-Annual reports of plant miles, home passed, basic subscribers

-Previous requirement of annually audited financial statements discontinued

Section 8. Programming

-Continued requirement for broad categories of programming on the system

-Continued free basic service to government offices, schools and libraries

Section 9. PEG channels

-Continuation of the existing 5 access channels, plus Fire Department training channel

-Agreement for triggers for additional channels

-Educational access after 10 years if fully programmed

-Government access anytime after fully programmed

-Triggers 9.5, 9.6, 9.7

-All digital conversion alternative for access channels, 12 MHz band instead of various channel requirements with triggers

-9.9 Public Access, $600,000 support for capital needs

-Access Advisory Group for capital expenditures recommendations

Government/Educational Grants

-Up front payment of 1.75 million

-Monthly sub fee for access support, .41/sub/month

Initially imposed on directly billed basic customers

Attempt to incorporate bulk accounts over time

-Up to 5 cents of access fee may be used for operating costs

-True up accounting over multiple yr period

-City allocates grant between Education and Government

-City Fiber grant of $750,000

Must be used for extension of City fiber system or electronics associated with that system

-None of access payments are to be construed as franchise fees

Section 10. General Right of way use

Generally same requirements for cable as are in place for other ROW users, 5.17 LMC

Section 11. System Design

-860 MHz system, two way activated

-Regular evaluation of need for new programming or new technology. Evaluation can occur by TW or by City through annual evaluations

Section 12. Technical Standards

-FCC standards

-City has right to examine tests results or order other tests

Section 13. Service Extension

-Exempting downtown from service obligation for competitors

-Density requirement for extension of service, 25 homes per mile

-Service outside of density limit on cost sharing basis

Section 14. Standby Power

City to have override capability for local emergency alerts

Section 15. Termination of Agreement

-Uncured Breach of any material provision allows City to terminate agreement

Section 16. Abandonment

If TW abandons system, City has variety of options to continue service.

Section 17. Transfer

-Transfers to affiliated entities allowed without City approval

-Transferee has to agree to franchise and ordinance obligations

Section 18. Miscellaneous

-TW expressly reserves the ability to pass through any costs to customers. Cable companies already have this right under federal law.

-As part of overall settlement of variety of issues with TW, (audit, lawsuit, gross (revenues definition, consultant fee issues, franchise, ordinance) City agreed TW would not have to pay application fee or consultant costs associated with this renewal.

EXHIBIT "A"

CITY OF LINCOLN, NEBRASKA

CABLE TELEVISION FRANCHISE

AGREEMENT

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AGREEMENT

This Agreement ("Agreement") is entered into in Lincoln, Nebraska this day of _____, 2005, by and between Time Warner Entertainment -Advance/Newhouse Partnership, doing business as Time Warner Cable ("Grantee"), and the CITY OF LINCOLN, NEBRASKA, a municipal corporation, (the "City"). The City and the Grantee are sometimes referred to hereinafter collectively as the "parties."

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

WHEREAS, the public has had adequate notice and opportunity to comment on Grantee's proposal to provide cable television service within the City; and

WHEREAS, the City has a legitimate and necessary regulatory role in ensuring the availability of state-of-the-art cable communications service, high technical capability and reliability of Cable Systems in its jurisdiction, the availability of local programming (including educational and governmental access programming) and quality customer service; and

WHEREAS, diversity in cable service and local and non-local programming is an important policy goal and the Grantee's Cable System should offer a wide range of programming services; and

WHEREAS, flexibility to respond to changes in technology, subscriber interests and competitive factors should be an essential characteristic of this Agreement and both the City and the Grantee will stress maximum system flexibility to take advantage of new technology to benefit subscribers and citizens as such technology becomes available; and

WHEREAS, the City is authorized to grant one or more nonexclusive franchises to construct, operate and maintain a cable television system within the boundaries of the City.

NOW, THEREFORE, in consideration of the mutual promises made herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the City and Grantee do hereby agree as follows:

SECTION 1. DEFINITIONS

For the purposes of this Agreement, and all exhibits attached hereto, the following terms, phrases, words and their derivations shall have the meanings given herein. Words defined in the Cable Communication Code shall have the meanings given therein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning. The word "shall" is always mandatory and not merely directory.

1.1 "Access" means the availability for use by various agencies, institutions, organizations, groups and individuals in the community, including the City and its designees, of the Cable System to distribute downstream, non-commercial video programming (including alpha numeric programming) as permitted under applicable law, including, but not limited to cablecasting spots to promote public or governmental announcements for services or programs that do not compete with services or programs offered by a Grantee.

(A) "Educational Access" means Access where Schools are the primary users having editorial control over non-commercial programming, signals and services.

(B) "Governmental Access" means Access where governmental institutions or their designees are the primary users having editorial control over non-commercial programming, signals and services; and

(C) "Public Access" means Access where members of the public are the primary users.

1.2 "Activation" or "Activated" means the status of any capacity on or part of the Cable System wherein the use of that capacity or part thereof may be made available without further installation of system equipment, whether hardware or software.

1.3 "Agreement" or "Franchise" means this document in which this definition appears, which is executed between the City and Grantee, containing the specific provisions of the authorization granted, including any exhibits attached hereto and incorporated herein.

1.4 "Bad Debt" means amounts lawfully owed by a customer and accrued as revenues on the books of Grantee, but not collected after reasonable efforts by Grantee.

1.5 "Broadcast Signal" means a television or radio signal transmitted over the air to a wide geographic audience, and received by a Cable System off-the-air by antenna, microwave, satellite dishes or any other means.

1.6 "Cable Acts" means the Cable Communications Policy Act of 1984, and the Cable Television Consumer Protection and Competition Act of 1992, as amended by the Telecommunications Act of 1996, regulations promulgated pursuant to such Acts, and any amendments or future federal cable television laws, acts or regulations.

1.7 "Franchise Area" means the area within the jurisdictional boundaries of the City, including any areas annexed by the City during the term of this Agreement

1.8 "Franchise Fee" means any tax, fee or assessment of any kind imposed by the City or other governmental entity on the Grantee or Subscriber, or both, solely because of their status as such. The term "Franchise Fee" does not include:

(A) 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);

(B) Capital costs which are required under this Agreement to be incurred by Grantee for public, educational or governmental access equipment and facilities;

(C) 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

(D) Any fee imposed under Title 17, United States Code.

1.9 "Gross Revenues" means any and all revenues, (including cash, credits, or other consideration of any kind or nature not enumerated below but is "revenue" under generally accepted accounting principles ("GAAP")) arising from, attributable to or in any way derived

directly or indirectly by the Grantee, its Affiliates or by any other entity that is a cable operator of the Cable System, from the operation of the Grantee's Cable System within the Franchise Area to provide Cable Services. Gross Revenues include, by way of illustration and not limitation:

- monthly fees charged Subscribers for Basic Service, expanded Basic Service, optional, premium, per channel, pay-per-view, video on demand or per program service;
- installation, disconnection, reconnection and change-in-service fees;
- leased channel fees;
- remote controls;
- late fees;
- revenues from rentals or sales of converters or other equipment;
- advertising revenues;
- revenues from program guides;
- additional outlet fees;
- Franchise Fees;
- interactive services to the extent they are a Cable Service;
- revenues from home shopping.

Gross Revenues shall include revenues received by an entity other than the Grantee, an Affiliate or another entity that operates the System where necessary to prevent evasion or avoidance of the obligation under this Agreement to pay the Franchise Fees.

Gross Revenues shall not include: (i) bad debt; provided, however, that all or part of any such bad debt that is written off but subsequently collected shall be included in Gross Revenues in the period collected; or (ii) any taxes on services furnished by the Grantee which are imposed directly on any Subscriber or user by the State or other governmental unit and which are collected by the Grantee on behalf of said governmental unit (a Franchise Fee is not such a tax and is included within Gross Revenues); or (iii) the revenue of any Person where such revenue has otherwise been included in the Grantee's revenue for franchise fee calculation purposes (so as to prevent revenue from being subject to a franchise fee twice); or (iv) money collected by the Grantee on behalf of the FCC in satisfaction of regulatory fees imposed upon the Grantee under Section 47 U.S.C. 159 of federal law; (v) launch support; (vi) coop marketing; (vii) payments or other consideration received from programmers for carriage of programming on the System; (vi) advertising agency commissions; and (vii) the revenue collected by the Grantee in satisfaction of the Educational and Government Access support fee required under the Franchise Agreement.

In the event Grantee receives consideration from the provision of Cable Service in the City from a source not specifically identified above, any franchise fee obligations will be determined pursuant to GAAP. If such consideration is "revenue" under GAAP then such consideration shall be included in Gross Revenues for franchise fee purposes. If such consideration is not "revenue" under GAAP then such consideration shall not be included in Gross Revenues.

If Grantee or an Affiliate bundles, ties, or combines the sale of some or all of its Cable Services with non-cable services, whether authorized or not by the Franchise, and if it is necessary to separately determine Gross Revenues attributable to particular Cable Services in order to determine franchise fees owed to the City, the Grantee shall allocate revenues, to the extent consistent with any applicable state or federal law or tariffs, in a manner so as to accurately reflect the actual revenue from Cable Services, taking into account all relevant factors, including generally available package prices and discounts. Grantee shall provide a statement with its franchise fee payment reflecting the methodology used and shall bear any burden of proof regarding whether the methodology used accurately reflects Cable Service revenues.

1.10 "Person" means any natural person, sole proprietorship, partnership, joint venture, association, or limited liability entity or corporation, or any other form of entity or organization.

1.11 "Rights-of-Way" shall mean the surface of and space above and below any real property in the City in which the City has an interest as an owner or as a trustee for the public for purposes of public travel, as they now or hereafter exist, including, but not limited to, all public streets, highways, avenues, roads, alleys, easements, sidewalks, tunnels, viaducts, or bridges; provided, however, this shall not include other public property for which a separate authorization and agreement to utilize any part of same shall be required from the City.

1.12 "System" means Grantee's Cable System.

SECTION 2. GRANT OF AGREEMENT

2.1 Grant

(A) The City hereby grants to Grantee a nonexclusive and revocable authorization (the "Franchise") to make lawful use of the Streets within the Franchise Area to construct, operate, maintain, reconstruct, rebuild and upgrade a Cable System subject to the terms and conditions set forth in this Agreement and applicable law. This Agreement shall constitute both a right and an obligation to construct, operate, maintain, reconstruct, rebuild and upgrade a Cable System as required hereby, and to fulfill the obligations set forth in, the provisions of this Agreement all subject to applicable law.

(B) The Grantee, through this Agreement, is granted the right to operate its Cable System using the City's Rights-of-Way within the Franchise Area in compliance with all applicable laws. Nothing in this Agreement shall be deemed to waive the requirements of the other codes and ordinances of general applicability enacted, or hereafter enacted, by the City.

(C) Grantee promises and guarantees, as a condition of exercising the privileges granted by this Agreement, that any Affiliate of the Grantee directly involved in the offering of Cable Service in the Franchise Area, or directly involved in the management or operation of the Cable System in the Franchise Area, will also comply with the terms and conditions of this Agreement.

(D) This Agreement is intended to convey limited rights and interests only as to those Rights-of-Ways in which the City has an actual interest. It is not a warranty of title or interest in any Right-of-Way; it does not provide the Grantee with any interest in any particular location within the Right-of-Way and it does not confer rights other than as expressly provided in the grant hereof. This Agreement does not provide the Grantee with any right of eminent domain.

(E) To the extent permitted by law, this Agreement shall not limit the City or Grantee's rights with respect to the provision of telecommunications services.

2.2 Use of Public Rights-of-Way

(A) Subject to the City's supervision and control, Grantee may erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the Rights-of-Way within the Franchise Area, such wires, cables, conductors, ducts, conduit, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of a Cable System within the Franchise Area. Grantee shall comply with all applicable laws.

(B) This grant does not include the installation, maintenance or construction, repair or replacement of any wireless telecommunications facilities or equipment within Rights-of Way or otherwise on City-owned property or on property held in trust or used by the City except for facilities or equipment used by the Grantee for status monitoring of Grantee's Communication Facility; equipment utilized to provide "last mile" connectivity to a Subscriber who could not economically be serviced otherwise; or upon approval by the City which shall not be unreasonably withheld, other wireless transmit/receive equipment incidental to the operation of Grantee's Communication Facility.

2.3 Term. The term of this Agreement and all rights, privileges, obligations and restrictions pertaining thereto shall be fifteen (15) years from the effective date of this Agreement as set forth in Section 2.4 below, unless terminated sooner as hereinafter provided.

2.4 Effective Date

(A) This Agreement and the rights, privileges and authority granted hereunder shall take effect and be in force from and after the effective date of this Agreement as specified in this Section.

(B) Within thirty (30) days after the effective date of the Ordinance granting this Agreement, Grantee shall signify its acceptance of this Agreement by executing a written acceptance of this Agreement. This franchise is void unless accepted in writing by Grantee within this timeframe.

(C) The effective date of this Agreement shall be the date on which it is accepted in writing by Grantee.

(D) The grant of this Agreement shall have no effect on the Grantee's duty under the prior franchise agreement or any ordinance in effect prior to the effective date of this Agreement to indemnify or insure the City against acts and omissions occurring during the period that the prior franchise agreement was in effect. Nor shall it have any affect upon liability to pay all Franchise Fees which were due and owed under prior franchises and ordinances.

2.5 Agreement Nonexclusive. This Agreement shall be nonexclusive, and subject to all prior rights, interests, easements or licenses granted by the City or its predecessors to any Person to use any property, Right-of-Way, easement, right, interest or license for any purpose whatsoever, including the right of the City to use same for any purpose it deems fit, including the same or similar purposes allowed Grantee hereunder. The City may at any time grant authorization to use the Rights-of-Way for any purpose not incompatible with Grantee's authority under this Agreement and for such additional agreements for Cable Systems as the City deems appropriate.

2.6 Grant of Other Agreements

(A) This Agreement shall be non-exclusive and the City reserves the right to grant to any other Person, at any time, the right to use or occupy the Streets or roads of the City for the construction and operation of any other Cable System, open video system or other multichannel video distribution system within the City or for whatever purposes deemed appropriate by the City. It is understood that nothing herein shall be construed to create any obligation to share any Access or Community Programming developed by Grantee with any other provider, except as specified by the City. Notwithstanding anything to the contrary, no such authorization or franchise granted to any other Person (whether by the City, State or Federal government) to operate a Cable System shall be on terms or conditions more favorable or less burdensome when taken as a whole than those imposed herein. Specifically, any franchisee shall be subject to the same requirements pertaining to the service area, contributions to the City's fiber system and PEG access as are imposed under this Agreement. In the event that such a franchise agreement is granted, pursuant to State or Federal law, on terms more favorable or less burdensome than those imposed in this agreement, then Grantee shall have the benefit of those more favorable terms.

(B) In the event the City or any operating division, department, agent or Franchisee of the City elects to build or operate its own Cable System or open video system, or leases dark fiber, poles or other facilities to third-party providers, neither the City nor any operating division, department or agent of the City shall discriminate against the Grantee in pole attachment fees, permitting procedures, permitting fees and relocation practices.

(C) If the City, or any operating division or department thereof, including Lincoln Electric Service, grants another Franchise or enters into any lease of facilities so as to enable a third party to offer Cable Service, and which requires the Grantee to relocate any of its facilities to accommodate such third party's use of the rights-of-way, easements or poles, the third party shall be required to reimburse Grantee for the actual costs of such relocation.

2.7 Effect of Acceptance. By accepting the Agreement, the Grantee acknowledges and accepts the City's legal right to issue and enforce the Agreement subject to applicable law and agrees that the Agreement was granted pursuant to processes and procedures consistent with federal law.

2.8 Police Powers.

(A) In accepting this Franchise, Grantee acknowledges that its rights hereunder are subject to the police powers of the City to adopt and enforce general ordinances necessary to the safety and welfare of the public and it agrees to comply with all applicable general laws and ordinances enacted by the City pursuant to such power. Any conflicts between the provisions of this Franchise Agreement and any other present or future lawful exercise of the City's police power shall be resolved in favor of the latter, except that any such exercise that is not of a general application in the jurisdiction or applies exclusively to Grantee which contains provisions inconsistent with this Agreement shall prevail only if, upon such exercise, the City finds that an emergency exists constituting a danger to health, safety, property, or general welfare or such exercise is mandated by law.

(B) Except for the City's exercise of its police powers, pursuant to this section this Agreement may only be modified or amended with the express written consent of the Grantee.

2.9 Franchise Area. Grantee shall offer Cable Service to every Person in the Franchise Area in accordance with the service extension provisions of this Agreement. In the

event of annexation, Grantee shall offer Cable Services within six (6) months of notification of the annexation.

SECTION 3. FRANCHISE FEE AND FINANCIAL CONTROLS

3.1 Franchise Fee. As compensation for the benefits and privileges granted under this Agreement and in consideration of permission to use the City's Streets, Grantee shall pay as a Franchise Fee to the City, throughout the duration of this Agreement, an amount equal to five (5%) percent of Grantee's Gross Revenues. Accrual of such Franchise Fee shall commence as of the effective date of this Agreement. Grantor reserves the right to unilaterally increase the franchise fee to the maximum that may be charged consistent with federal and state law.

3.2 Payments. Grantee's Franchise Fee payments to the City shall be computed quarterly for the preceding calendar quarter ending September 30, December 31, March 31 and June 30. Each quarterly payment shall be due and payable no later than thirty (30) days after said dates.

3.3 Quarterly Agreement Fee Reports. Each payment shall be accompanied by a written report to the City, verified by a responsible official of Grantee, containing an accurate statement in summarized form, as well as in detail, of Grantee's Gross Revenues and the computation of the payment amount. Such reports shall detail all Gross Revenues of the Cable System. In the event this Agreement is revoked or otherwise terminated prior to its expiration date, the Grantee shall file with the City, within ninety (90) days of the date of revocation or termination, a C.P.A. certified revenue statement showing the Gross Revenues received by it since the end of the previous year and shall make adjustments at that time for the Franchise Fee due up to the date of revocation or termination.

3.4 No Accord and Satisfaction. No acceptance of any payment shall be construed as an accord by the City that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the City may have for further or additional sums payable or for the performance of any other obligation of Grantee.

3.5 Audits. No more than once every three (3) years the City shall have the right to conduct audits of Grantee's records related to the Franchise Fee payments made pursuant to this Agreement. No audit may go back more than five (5) years. In the event the amount owed as a result of the findings of such audit is in excess of four percent (4%) of the Franchise Fees paid by Grantee during the audited period, Grantee shall pay City's out-of-pocket expenses associated with such audit.

3.6 Financial Records. Grantee agrees to meet with a representative of the City upon request to review Grantee's methodology of record keeping related to the computation of the Franchise Fee.

3.7 Late Franchise Fee Payments. In the event any Franchise Fee payment is not received within thirty (30) days from the end of the calendar quarter, Grantee shall be assessed a late fee and may be assessed interest in accordance with the City's Cable Communications Ordinance.

3.8 Compensation. In the event the obligation of Grantee to compensate the City through Franchise Fees as set forth in this Franchise is lawfully suspended or eliminated, in whole or part, then the Grantee shall, to the extent required by applicable law, pay to the City equivalent compensation to the compensation paid to the City by other similarly situated users of the Streets for Grantee's use of the Streets, provided that in no event shall such payments exceed

the equivalent of five percent (5%) of the Grantee's Gross Revenues or such other cap required by applicable law.

3.9 Payment on Termination. If this Agreement is revoked pursuant to the terms of this Agreement, the Grantee shall, as per Section 3.3, file with the City within ninety (90) calendar days of the date of the revocation, a gross revenue statement, certified by a certified public accountant, showing the Gross Revenues received by the Grantee since the end of the previous fiscal year. The City reserves the right in the event of revocation or expiration (if no application for renewal or appeal related thereto is pending), to satisfy any remaining financial obligations of the Grantee to the City by utilizing the funds available in a Letter of Credit or other security provided by the Grantee.

3.10 Tax Liability. The Franchise Fees shall be in addition to any and all taxes or other levies or assessments which are now or hereafter required to be paid by businesses in general by any law of the City, the State of Nebraska or the United States including, without limitation, sales, use and other taxes, business license fees or other payments. Payment of the Franchise Fee under this Agreement shall not exempt the Grantee from the payment of any license fee, tax or charge on business, occupation, property or income that may be imposed by the City. Any other license fees, taxes or charges shall be of general applicability in nature and shall not be levied against the Grantee solely because of its status as a Grantee as defined herein.

SECTION 4. ADMINISTRATION AND REGULATION

4.1 Authority. The City shall be vested with the power and right to administer and enforce the requirements of this Agreement or to delegate that power and right, or any part thereof, to the extent permitted under Federal, State or local law, to any agent.

4.2 Rates and Charges. All Grantee rates and charges related to or regarding Cable Services shall be subject to regulation by the City to the full extent authorized by applicable Federal or State laws.

4.3 Filing of Rates and Charges. Upon request of City, Grantee shall file with the City a complete schedule of rates and charges for Cable Services and leased Access Channels provided under this Agreement.

4.4 Late Fees. Fees for the late payment of bills shall not be assessed until after the Service has been fully provided.

4.5 Performance Evaluation.

(A) Evaluation sessions may be held at any time by the City during the term of this Agreement, but no more frequently than annually.

(B) All evaluation sessions shall be open to the public and announced at least one week in advance in a newspaper of general circulation in the City. City shall notify Subscribers of all regular evaluation sessions by announcement on at least one Access Channel seven (7) times between the hours of 7:00 a.m. and 9:00 p.m. for five (5) consecutive days preceding each session.

(C) Topics which may be discussed at any evaluation session may include, but are not limited to, Cable Service rate structures; Franchise Fees; occupation taxes; liquidated damages; free or discounted Cable Services; application of new technologies; system performance; Cable Services provided; programming offered; customer complaints; privacy;

amendments to this Agreement; judicial and FCC rulings; line extension policies; and the City's or Grantee's rules; provided that nothing in this subsection shall be construed as requiring the renegotiation of this Agreement.

(D) During evaluations under this Section, Grantee shall fully cooperate with the City and shall provide such information and documents as the City may lawfully and reasonably require to perform the evaluation.

(E) As a result of a periodic review or evaluation session, upon notification from City, Grantee shall meet with City and undertake good faith efforts to reach agreement on changes and modifications to the terms and conditions of this Franchise which are both economically and technically feasible.

SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS

5.1 Indemnification

(A) General Indemnification. Upon timely notice and tender as set forth in Section 5.1(D), Grantee shall indemnify, defend and hold the City, its officers, elected and appointed officials, boards, committees, commissions, agents, volunteers, and employees, harmless from any action or claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and attorneys' fees or expenses, in any way arising out of, resulting from, or alleged to arise out of or result from any construction, excavation, operation, maintenance, reconstruction, or any other act done under this Agreement, by or for Grantee, its agents, or its employees, or arising out of, resulting from, or alleged to arise out of or result from any neglect or omission of Grantee. Grantee shall consult and cooperate with the City while conducting its defense of the City.

(B) Indemnification for Relocation. Grantee shall indemnify the City for any damages, claims, additional costs or expenses assessed against, or payable by, the City related to, arising out of, or resulting, directly or indirectly, from Grantee's failure to remove, adjust or relocate any of its facilities in the Streets in a timely manner in accordance with any relocation lawfully required by the City.

(C) Non-waiver. The fact that Grantee carries out any activities under this Agreement through independent contractors shall not constitute an avoidance of or defense to Grantee's duty of defense and indemnification under Section 5.1 (A).

(D) Duty to Give Notice and Tender Defense. The City shall give the Grantee timely written notice of any claim or of the commencement of any action, suit or other proceeding covered by the indemnity in this Section. In the event any such claim arises, the City or any other indemnified party shall timely tender the defense thereof to the Grantee and the Grantee shall have the obligation and duty to defend any claims arising thereunder, and the City shall cooperate fully therein.

(E) The indemnification of Section 5.1 (A) shall survive the term of any franchise and shall continue in full force and effect as to the Grantee's responsibility to indemnify. In no event shall the indemnification requirements of this Section 5.1 be construed to impose any obligation on the part of Grantee, its agents or employees to indemnify the City, its agents or employees or with respect to Government Access programming, or any utilization of the City's network, or the City's operation of the emergency over-ride system pursuant to section 14.2 (B).

5.2 Insurance Requirements.

(A) General Requirement. Grantee must have adequate insurance during the entire term of this Agreement to protect the City against claims for injuries to Persons or damages to property which in any way relate to, arise from or are connected with this Agreement, or involve Grantee, its agents, representatives, contractors, subcontractors and their employees. However, no coverage shall be provided for claims arising out of or due to the sole negligence of the City.

(B) Initial Insurance Limits. Grantee must keep insurance in effect in accordance with the minimum insurance limits herein set forth below. The Grantee shall obtain policies for the following initial minimum insurance limits:

1. Commercial General Liability: Five million dollars ($5,000,000) aggregate limit per occurrence for bodily injury, personal injury and property damage;

2. Automobile Liability: Two million dollars ($2,000,000) combined single limit per accident for bodily injury and property damage; and

3. Employer's Liability: Two million dollars ($2,000,000).

5.3 Deductibles and Self Insured Retentions. If Grantee changes its policy to include a self-insured retention, the Grantee shall give notice of such change to the City. The City's approval will be given if the self-insured retention is consistent with standard industry practices. Any deductible or self-insured retention of the policies shall not in any way limit Grantee's liability to the City. The insurance limits set forth above shall be adjusted from time to time upon notice to the Grantee but in no event shall the insurance amounts required under this Agreement exceed the maximum municipal liability under State law.

(A) Endorsements.

1. All policies shall contain, or shall be endorsed so that:

(a) The City, its officers, officials, boards, commissions, employees and agents are to be covered as, and have the rights of, named additional insured with respect to liability related to, arising out of by reason of activities performed by, or on behalf of, Grantee under this Agreement or applicable law, or in the construction, operation or repair, or ownership of the Cable System;

(b) The Grantee's insurance coverage shall be primary insurance with respect to the City, its officers, officials, boards, commissions, employees and agents. Any insurance or self insurance maintained by the City, its officers, officials, boards, commissions, employees and agents shall be in excess of the Grantee's insurance and shall not contribute to it; and

(c) Grantee's insurance shall apply separately to each insured against whom a claim is made or lawsuit is brought, except with respect to the limits of the insurer's liability.

2. The insurance shall provide that it shall not be cancelled or materially altered so as to be out of compliance with the requirements of this section without thirty (30) days' written notice first being given to the City. If the insurance is cancelled or materially altered so as to be out of compliance with the requirements of this section within the term of this Agreement, Grantee shall provide a replacement policy. Grantee agrees to maintain

continuous uninterrupted insurance coverage, in the amounts required, for the duration of this Agreement.

(B) Verification of Coverage. The Grantee shall furnish the City with certificates of insurance and endorsements or a copy of the page of the policy reflecting blanket additional insured status. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy are to be on standard forms or such forms as are consistent with standard industry practices, and are to be received subject to approval by City as to compliance with Section 5.2 and 5.3 herein prior to the commencement of activities associated with this Agreement. The Grantee hereby warrants that its insurance policies satisfy the requirements of this Agreement and City laws.

(C) In the alternative to providing a certificate of insurance to the City certifying insurance coverage as required above, Grantee's self-insurance shall provide the same amount and level of protection for Grantee and the City, its officers, officials, boards, commissions, agents and employees as otherwise required under this Section. The adequacy of the self-insurance shall be subject to the periodic review and approval of the City. If Grantee elects to provide self-insurance under this Section, any failure to maintain adequate self-insurance shall be cause for immediate termination of this Agreement by the City.

5.4 Letter of Credit

(A) On the Effective Date of this Franchise, the Grantee shall deliver to the City an irrevocable and unconditional Letter of Credit, in a form and substance acceptable to the City, from a National or State bank approved by the City, in the amount of $100,000.00.

(B) The Letter of Credit shall provide that funds will be paid to the City upon written demand of the City, and in accordance with the terms of this Agreement, in payment for liquidated damages charged pursuant to this Section, in payment for any monies owed by the Grantee to the City pursuant to its obligations under this Franchise, or in payment for any damage incurred by the City as a result of any claims arising out of acts or omissions by the Grantee pursuant to this Franchise.

(C) As an alternative to recovery of any monies owed by the Grantee to the City for actual damages to the City as a result of any claims arising out of acts or omissions by the Grantee pursuant to the Franchise, the City, in its sole discretion, may charge to and collect from the Letter of Credit the following liquidated damages:

1. For failure to provide data, documents, reports or information as required herein, the liquidated damage shall be $250.00 per day for each day, or part thereof, such failure occurs or continues.

2. For failure to comply with construction, operation or maintenance standards, the liquidated damage shall be $350.00 per day for each day, or part thereof, such failure occurs or continues.

3. For failure to comply with any of the material provisions of this franchise, for which a liquidated damage is not otherwise specifically provided pursuant to this paragraph (C), the liquidated damage shall be $500.00 per day for each day, or part thereof, such failure occurs or continues.

(D) Each violation of any material provision of this Franchise shall be considered a separate violation for which a separate liquidated damage can be imposed.

(E) Whenever the Mayor determines that there is a basis to charge to and collect from the Letter of Credit under subparagraph (B) above or for any other violation contemplated in subparagraph (C) above, a written notice shall be given to Grantee informing it of such basis or violation. During the thirty (30) days following such notice, Grantee shall be given an opportunity to be heard by the Mayor and an opportunity to cure.

(F) Nothing contained herein shall preclude the Grantee from appearing before the City Council at any time in response to any alleged violations in accordance with the rules of the City Council.

(G) If said Letter of Credit or any subsequent Letter of Credit delivered pursuant thereto expires prior to twelve (12) months after the expiration of the term of this Franchise, it shall be renewed or replaced during the term of this Franchise to provide that it will not expire earlier than twelve (12) months after the expiration of this Franchise. The renewed or replaced Letter of Credit shall be of the same form and with a bank authorized herein and for the full amount stated in subparagraph (A) of this Section.

(H) If the City draws upon the Letter of Credit or any subsequent Letter of Credit delivered pursuant hereto, in whole or in part, the Grantee shall immediately replace or replenish it to its full amount and shall deliver to the City a like replacement Letter of Credit or certification of replenishment for the full amount as a substitution of the previous Letter of Credit. This shall be a continuing obligation for any withdrawals from the Letter of Credit.

(I) If any Letter of Credit is not so replaced or replenished, the City may draw on said Letter of Credit for the whole amount thereof and use the proceeds as satisfaction of Grantee's performance of franchise obligations to the extent necessary. The failure to replace or replenish any Letter of Credit may also, at the option of the City, be deemed a default by the Grantee under this Franchise. The drawing on the Letter of Credit by the City, and use of the money so obtained for payment or performance of the obligations, duties and responsibilities of the Grantee which are in default, shall not be a waiver or release of such default.

(J) The collection by City of any damages or monies from the Letter of Credit shall not affect any other right or remedy available to it, nor shall any act, or failure to act, by the City pursuant to the Letter of Credit, be deemed a waiver of any right of the City pursuant to this Franchise or otherwise.

SECTION 6. CUSTOMER SERVICE

6.1 Customer Service Standards. The Grantee shall comply with the customer service standards set forth by the Federal Communications Commission as amended.

SECTION 7. REPORTS AND RECORDS

7.1 Open Records. Access to the books and records of the Grantee shall be governed by Section 5.15.330 of the City's Cable Communications Ordinance.

7.2 Confidentiality. The City agrees to keep confidential any trade secrets, proprietary or confidential books records, or any other filings with City by Grantee to the extent permitted by law and may not use any such information to compete with Grantee in any manner, directly or through any operating division, department or agent. Grantee shall be responsible for clearly and conspicuously stamping the work "Confidential" on each page that contains trade secret, confidential or proprietary information, and shall provide a brief written explanation as to

why such information is trade secret, confidential or proprietary and how it may be treated as such under State or Federal law. If the City receives a demand from any Person for disclosure of any information designated by Grantee as trade secret, proprietary or confidential, the City shall, so far as consistent with applicable law, advise Grantee and provide Grantee with a copy of any written request by the party demanding access to such information within a reasonable time. City will reasonably cooperate with Grantee in any efforts by Grantee to protect the confidentiality of any such material.

7.3 Reports Required.

(A) The Grantee is expressly exempted from and relieved of compliance with Section 5.15.320 of the City's Cable Communications Ordinance. In lieu thereof the Grantee shall be subject to the requirements set forth in (B), (C) and (D) below.

(B) The Grantee shall provide the City semi-annual reports on Customer Complaints. For the purposes of this requirement Customer Complaints are defined as:

1. Written Complaints received by the Grantee and their resolution

2. Service Call summary

3. Summary of any material trend of complaints received by the Grantee

(C) The Grantee shall upon request by the City provide the City with a copy of any public (non-confidential) document that the Grantee has filed with the state or federal government and an annual summary of plant miles, homes passed, and basic subscribers.

(D) Grantee shall at all times maintain and make available for local inspection by the City upon request:

1. Records showing the location of Cable System plant installed or in use in the Franchise Area;

2. A list of Grantee's Cable Services, rates and channel lineups;

SECTION 8. PROGRAMMING AND CHANNEL CAPACITY

8.1 Provision of Programming and Channel Capacity. The Grantee shall provide the programming and Channel capacity required in this Agreement.

8.2 Broad Programming Categories. The Grantee shall offer programming in the following broad categories:

News
Weather
Sports
Public affairs
Educational
Cultural
Music
Religious

8.3 Cable Service to City Offices, Schools, Libraries. The Grantee shall provide one drop and Standard Service (defined to be the Basic Service and the next most highly penetrated tier of programming) to those buildings receiving free service as of the Effective Date of this Agreement so long as those buildings are being used for City or County government purposes. Following the Effective Date of this Agreement, new or additional buildings with City employees will receive one drop and Standard Service free of charge subject to being located within 250 feet of the Cable System. The Grantee will provide free service to state-accredited Public and Parochial K-12 schools subject to the building being located within 250 feet of the Cable System. Buildings eligible for a free drop and Standard Service but located more than 250 feet from the Cable System may still receive free service subject to reimbursing the Grantee for the actual costs of the drop in excess of 250 feet.

SECTION 9. PUBLIC, GOVERNMENT, EDUCATION ACCESS CHANNELS

9.1 The Grantee shall initially provide 5 (five) channels for non-commercial Public, Educational and Government ("PEG") access use. The channels will be initially allocated as follows:

(A) 2 channels for Public Access

(B) 2 channels for Government Access

(C) 1 channel for Educational Access

9.2 The City may reallocate the five PEG access channels among "Public", "Educational" and "Government" with the approval of the Grantee.

9.3 The Grantee shall continue to provide a secured digital video stream for Fire Department training purposes and provide the converters in training rooms at fire stations required for viewing that training channel.

9.4 The Grantee shall provide an additional channel for Educational Access, upon request of the City, at any time after the 10th anniversary of the Effective Date of this Agreement, if the then existing Educational Access channel(s) is Fully Programmed. For the purposes of this requirement, fully programmed means that the Educational Access channel(s) is programmed with Locally-Produced audio-video television programming (i.e. not character generated or bulletin board type programming) from 4 p.m. to 10 p.m. seven (7) days a week for six (6) consecutive weeks.

9.5 The Grantee shall provide an additional channel for Government Access, upon request of the City, whenever the then existing Government Access channels are Fully Programmed. For the purposes of this provision, Fully Programmed means:

(A) The Government Access channel (currently channel 5) is programmed with Locally-Produced audio-video television programming (i.e. not character generated programming) from 4 p.m. to 10 p.m. seven days a week for six consecutive weeks; and

(B) The Bulletin Board Government Access channel (currently channel 10) is programmed at least fifty percent of the time from 4 p.m. to 10 p.m. with Locally-Produced audio-video television programming (i.e. not character generated programming) seven days a week for six consecutive weeks.

9.6 For the purposes of the "triggers" set forth in this Section 9, a program may be repeated twice for the purposes of calculating the hours of programming. Additional repeats of

programming are permitted but such additional repeats shall not be counted in any usage formula set forth above.

9.7 For the purposes of the triggers set forth in this Section 9, "Locally - Produced" means audio-video television programming produced within the City of Lincoln; except, however, up to 10% of such programming may be imported from outside the City of Lincoln.

9.8 In the event Grantee converts to an all digital transmission standard, the City shall relinquish all analog spectrum and be allocated 12 MHz for audio/video PEG channels or audio/video training channels, with no triggers for additional bandwidth. Grantee shall encode the transmissions in that 12 Mhz to provide a minimum of 77.6 megabits/sec (256 QAM). At such time that Grantee provides standard encoding methods that provide greater capacity within the allocated bandwidth, the City may take advantage of that capacity. At the time of conversion, Grantee shall provide the necessary digital encoding equipment for existing PEG or training channels feeds. The City shall be responsible for purchase of encoding or grooming equipment for future additional digital PEG or training channels. Grantee shall provide on Basic Service all additional PEG channel feeds the City chooses to provide, whether standard definition or high definition feeds. Digital Programming provided for any PEG or training channel, regardless of source (the city, LPS, Grantee's studio, outside videotape or DVD, etc.) shall not have its quality reduced by Grantee (by rate shaping or down sampling or any other method) either during direct broadcast or by any method used to store the programming for later broadcast or rebroadcast, without the City's consent. Grantee may compress any analog source at rates that show no noticeable difference in quality from the original feed. Any bandwidth unused by the City may be used by Grantee.

9.9 Public Access.

(A) The Grantee shall have the exclusive responsibility for administering and operating Public Access subject to the following conditions:

1. The Grantee will operate Public Access on a non-discriminatory basis.

2. The Grantee shall not exercise any editorial control except as otherwise permitted by applicable law. Grantee shall be the final arbiter on scheduling conflicts.

3. The City or its designee may review and comment upon the Public Access rules.

(B) The Grantee shall continue to operate Public Access at the same level that it operates Public Access as of the Effective Date of this Agreement.

(C) The Grantee shall expend six hundred thousand dollars ($600,000.00) over the term of the franchise to support the capital needs of Public Access. The Grantee shall expend a minimum of $200,000 in the first five years of the term, $200,000 in the second five years of the term, and $200,000 in the third year of the term , but in no event shall the total spending requirements under this section exceed $600,000.

(D) The Grantee shall make reasonable efforts to develop an advisory group of Public Access users and to consider the suggestions from this group when making Public Access capital expenditures; provided, however, the role of the users is advisory only and all purchasing decisions shall be at the sole discretion of the Grantee.

9.10 Unused Access Channels. The City shall adopt rules that enable the Grantee to use a PEG access channel when that channel is not being used for its designated purpose.

9.11 Grants.

(A) At the time of the acceptance of the Franchise, the Grantee shall make a one-time lump sum payment to the City in the amount of $1.75 million (one million seven hundred and fifty thousand dollars).

(B) The Grantee shall collect and remit to the City $.41 (41 cents) per directly billed Basic Service customer per month (hereinafter the "G/E Grant"). The Grantee shall have no obligation to remit the G/E grant to the City until such time as Grantee has recouped the $1.75 million from directly billed Basic Service customers. Thereafter, the G/E Grant shall be remitted to the City at the time of each franchise fee payment. Grantee shall endeavor whenever possible to assess the G/E Grant on bulk accounts, but in no event shall the overall G/E Grant exceed $.41 multiplied by the number of directly billed Basic Service customers. Grantee shall provide an annual report to the City on the status of the G/E Grant calculation.

(C) The G/E (including the initial $1.75 million) Grant shall be used exclusively for the support of the capital needs associated with Government and Educational Access; provided, however, up to $.05 (5 cents) or 12.2% of the G/E Grant may be applied to the non-capital needs (operating costs) associated with Government and Educational Access. The City shall maintain the allocation outlined above for the following time periods: beginning of year 1 through the end of year 5 of the franchise term; beginning of year 6 through the end of year 8; beginning of year 9 through the end of year 12; beginning of year 13 through the end of year 15.

(D) The City shall be responsible for allocating the G/E Grant between Educational Access and Government Access. The city shall notify Grantee thirty (30) days prior to the next fiscal year on how the City will allocate the G/E Grant for that fiscal year. Upon request, the City will provide Grantee with reasonable and appropriate documentation to verify that the G/E Grant has been expended in accordance with the requirements outlined in Subsection (C).

9.12 Live Cablecasting Return Locations

(A) The Grantee shall maintain the current return paths from City Hall and the Q St. Fire Station to the Grantee's headend to accommodate programming originated by the City for the Government Access channel(s).

(B) The Grantee shall maintain the current return path from the Lincoln Public School's District Office to the Grantee's headend to accommodate programming originated by the schools for the Educational Access channel.

9.13 City Fiber Loop. The Grantee shall expend up to seven hundred and fifty thousand dollars ($750,000.00) in completing fiber loops or for electronic transport equipment connected to the fiber loop for the City's internal communications needs as requested by the City. Such fiber loops may be completed by either Grantee at Grantee's cost or by the City at the City's option. The fiber shall not be used for commercial or competitive purposes except where the City is required by applicable law to share conduit space with another user.

9.14 City Fiber Loop Extensions.

(A) The Grantee shall extend the City's fiber system to the Bluff Rd landfill at the City's request. The City will reimburse the Grantee for the actual costs of this extension

based upon the Grantee's time and materials. The City shall be responsible for securing necessary conduit and any right-of-way authorizations.

(B) The Grantee shall extend the City's fiber system to the Ashland Treatment plant at the City's request. The City will reimburse the Grantee for the actual costs of this extension based upon Grantee's time and materials. The City shall be responsible for securing necessary conduit and any right-of-way authorizations.

9.15 Payments Not Franchise Fees. Except as specifically provided in this Section 9, none of the payments required under this Section 9 shall be treated by Grantee, or considered in any way by Grantee, a Franchise Fee. All such payments shall be in addition to the Franchise Fee required of Grantee pursuant to Section 3.1 hereof. Provided that the City expends the additional financial obligations, payments and other commitments in a manner required herein, the Grantee agrees not to assert or claim at any time before any court or administrative agency that the additional financial obligations, payments and other commitments expressed herein are franchise fees, so as to form the basis for offset or credit against any payments due the City.

SECTION 10. GENERAL RIGHT-OF-WAY USE AND CONSTRUCTION

10.1 Compliance with Applicable Laws, Resolutions and Ordinances.

(A) The terms of this Franchise shall define the contractual rights and obligations of the Grantee with respect to operation of the System in the City. However, the Grantee shall at all times during the term of this Franchise be subject to the lawful exercise of the police powers of the City. The grant of this Franchise does not relieve the Grantee of its obligations to obtain any licenses, permits or other authority as may be required by the City Code, as it may be amended, for the privilege of operating a business within the City or for performing work on City property or within the Rights-of-Way, to the extent not inconsistent with this Franchise.

(B) In the event the Grantee cannot determine how to comply with any Rights-of-Way requirement of the City, whether pursuant to this Franchise or other requirement, the Grantee shall immediately provide written notice of such question, including the Grantee's proposed interpretation, to the City, in accordance with Section 18.1. The City shall provide a written response within fourteen (14) days of receipt indicating how the requirements cited by the Grantee apply. The Grantee may proceed in accordance with its proposed interpretation in the event a written response is not received within seventeen (17) days of mailing or delivering such written question.

10.2 Construction.

(A) Subject to applicable laws and the provisions of this Agreement, Grantee may perform all construction necessary for the operation of its Cable System. All construction and maintenance of any and all facilities within Rights-of-Way incident to Grantee's Cable System shall, regardless of who performs the construction, be and remain Grantee's responsibility. Grantee shall apply for, and obtain, all permits necessary for construction or installation of any facilities, and for excavating and laying any facilities, within the Rights-of-Way. Grantee shall pay all applicable permit fees required of any Person (except for the City) working in the Rights-of-Way upon issuance of the requisite construction permits by the City to Grantee.

(B) Prior to beginning any construction, Grantee shall secure any required permits for work in the Rights-of-Ways.

(C) Grantee may make excavations in Rights-of-Way for any facility needed for the maintenance or extension of Grantee's Cable System. Prior to doing such work, Grantee shall apply for, and obtain, applicable permits from the City. Whenever it is possible and reasonably practicable to joint trench or share bores or cuts, Grantee shall work with the City and other providers, licensees, permittees and franchisees so as to reduce the number of Rights-of-Way cuts within the City.

(D) In the event of an unexpected repair or emergency, a Grantee may commence such repair and emergency response work as required under the circumstances, provided the Grantee shall notify the Director of Public Works and Utilities promptly, before such repair or emergency work, or the next business morning thereafter if advance notice is not practicable.

10.3 Maintenance and Workmanship

(A) Grantee, at its own expense, shall repair, renew, change and improve its facilities to keep them in good repair and safe condition.

(B) The Grantee's Cable System shall be located, erected and maintained so as not to endanger or interfere with the safety of Persons, or so as not to unnecessarily hinder or obstruct the free use of Rights-of-Way, alleys, bridges or other public property.

(C) Repair and Restoration of Property.

1. If the Grantee reasonably knows or should have known it has damaged public or private property, it shall promptly notify the property owner within twenty-four (24) hours in writing.

2. If public or private property is disturbed or damaged, the Grantee shall restore the property equivalent to its former condition. Public Rights-of-Way or other City property shall be restored in a manner and within a timeframe approved by the City's Director of Public Works. If restoration of public Rights-of-Way or other property of the City is not satisfactorily performed within a reasonable time, the Director of Public Works may, after prior notice to the Grantee, or without notice, where the disturbance or damage creates a risk to public health or safety, or cause delay or added expense to a public project or activity, cause the repairs to be made at the Grantee's expense and recover the cost of those repairs from the Grantee. Within thirty (30) days of receipt of an itemized list of those costs, including the costs of labor, materials and equipment, the Grantee shall pay the City. If suit is brought by City or Grantee with respect to the obligations of this Section 10.3(C), the non-prevailing party shall pay all reasonable attorneys fees and costs of the prevailing party.

(D) Movement on behalf of Other Rights-of-Way users. If any removal, replacement, modification or disconnection is required to accommodate the construction, operation or repair of the facilities or equipment of another Rights-of-Way, Grantee shall, after at least thirty (30) days' advance written notice, take action to effect the necessary changes requested by the responsible entity. The expense of such changes shall be paid by the other user of the Rights-of-Way for whose benefit the work is being done other than the City.

(E) Relocation or Removal of Facilities. Within 120 days, weather permitting, following written notice from the City, or immediately in an emergency, Grantee shall, to the

extent permitted by law, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any of Grantee's facilities within the right-of-way whenever the Mayor making a final determination that such removal, relocation, change or alterations is reasonably necessary for:

1. The construction, repair, maintenance or installation of any non-competitive City or other non-competitive public improvements in or upon the Rights-of-Way.

2. The vacation of a public street or the release of a utility easement.

In the event the City compensates any other Person (other than the City) for such work, then the Grantee shall be similarly compensated.

(F) Movement for Other Permittees. At the request of any Person holding a valid permit to move a building, house or structure and upon reasonable advance notice, Grantee shall temporarily raise, lower or remove its wires as necessary to permit the moving of a building, house or structure. The expense of such temporary changes must be paid by the permit holder, and Grantee may require a reasonable deposit of the estimated payment in advance.

10.4 Construction and Use of Poles. Whenever feasible, Grantee shall use existing poles when the installation of facilities aboveground is permitted. In the event Grantee cannot obtain the necessary poles and related facilities pursuant to a pole attachment agreement, and only in such event, then it shall be lawful for Grantee to make all needed excavations in the Streets for the purpose of placing, erecting, laying, maintaining, repairing and removing poles, conduits, supports for wires and conductors, and any other facility needed for the maintenance or extension of Grantee's Cable System. The City shall have the right to require Grantee to change the location of any of the Grantee's poles within Rights-of-Way when, in the opinion of the City, the public convenience requires such change, and the expense thereof shall be paid by Grantee. Notwithstanding the foregoing, the erection of new poles is only to be a last resort and in any event new poles may not be erected in any new subdivision.

10.5 Standards. In the maintenance and operation of its Cable System in Rights-of-Way, alleys and other public places, and in the course of any new construction or addition to its facilities, the Grantee shall proceed so as to not unreasonably interfere with the use of the Rights-of-Way.

10.6 Work of Contractors and Subcontractors. Grantee will take prompt corrective action if it finds that any facilities or equipment on the Cable System are not operating in compliance with the requirements of this Agreement or applicable law.

SECTION 11. SYSTEM DESIGN.

11.1 Cable System. The Grantee shall maintain and operate a modern, high quality Cable System with a minimum capacity of 860 MHz. The Cable System shall be two-way activated; support interactive cable services; and shall be designed for optimum reliability and flexibility; and Grantee shall regularly evaluate the need for new programming or incorporating new technologies.

11.2 Corrective Action. The Grantee will take prompt corrective action if it finds that any facilities or equipment in the Cable system are not operating in compliance with the requirements of this Agreement or applicable law.

SECTION 12. TECHNICAL STANDARDS

12.1 Technical Performance. The Grantee shall comply with the technical standards set forth in the rules and regulations of the FCC as such rules and regulations may from time to time be amended.

12.2 System Tests and Inspections; Special Testing.

(A) The Grantee shall perform all tests required under the rules and regulations of the FCC.

(B) The City shall have the right to inspect all construction or installation work performed pursuant to the provisions of the Franchise. In addition, the City may require special testing of a location or locations within the System if there is a particular matter of controversy or unresolved complaints regarding System construction, operations or installation work pertaining to such locations(s). Such tests shall be limited to the particular matter in controversy and the applicable standards. The City shall endeavor to so arrange its request for such special testing so as to minimize hardship or inconvenience to the Grantee or to the Subscribers of such testing.

(C) Before ordering such tests, the Grantee shall be afforded thirty (30) days following receipt of written notice to investigate and, if necessary, correct problems or complaints upon which tests were ordered. The City shall meet with the Grantee prior to requiring special tests to discuss the need for such and, if possible, visually inspect those locations which are the focus of concern. If, after such meetings and inspections, the City wishes to commence special tests and the thirty (30) days have elapsed without correction of the matter in controversy or resolution of complaints, the tests shall be conducted by a qualified engineer selected by the City and the Grantee, and Grantee shall cooperate in such testing. If Grantee fails to meet the applicable lawful standards as evidenced by the test results, such tests shall be paid for by Grantee.

(D) Unless otherwise provided in this Franchise, the test shall be supervised by the Grantee's chief technical authority, or an appropriate designee, who shall certify all records of tests provided to the City.

(E) Test results under this Section shall be filed with the City within fourteen (14) days of written request of the City.

(F) If any test indicates that any part or component of the System fails to meet applicable requirements, the Grantee, without requirement of additional notice or request from the City shall take corrective action, retest the locations and advise the City of the action taken and the results achieved by filing a written report certified by the Grantee's chief technical authority or its appropriate designee.

SECTION 13. SERVICE EXTENSION.

13.1 Service to Potential Subscribers

(A) The Grantee shall continue to provide service to all areas that it serves as of the Effective Date. Service will be provided at standard installation rates to homes in all areas meeting a density of 25 homes per mile as measured from the nearest useable point of the then existing Cable Television System. Neither the Grantee nor a competing cable provider shall be required to serve the downtown Lincoln area described as the area bounded on 7th Street to the West, K St to the South, 17th Street to the East and Q St to the North.

(B) Unserved areas with a density less than 25 (twenty-five) homes per mile, as measured from the nearest useable point of the then existing Cable Television system, will be provided service on a cost-sharing basis with the Grantee assuming the costs equal to 25 (twenty-five) homes per mile and the requesting customer(s) assuming the incremental costs.

(C) For the purposes of this Agreement, a standard installation is as a drop of 125 (one hundred and twenty five) feet or less. Drops in excess of 125 (one hundred and twenty five) feet will be provided on a cost-sharing basis with the customer assuming or bearing the incremental costs.

SECTION 14. STANDBY POWER EAS.

14.1 Standby Power. The Grantee shall maintain standby power at the headend, hubs and node locations.

14.2 Emergency Alert Capability.

(A) The Grantee shall comply with the EAS requirements imposed under federal law.

(B) The Grantee shall continue to provide the City with a separate over-ride system that can provide local alerts.

SECTION 15. AGREEMENT BREACHES; TERMINATION OF AGREEMENT.

15.1 Procedure for Revocation. The City shall undertake the following procedures for revocation:

(A) If the City believes that Grantee has breached any material provision of this Agreement and the City intends to pursue revocation of this Agreement, the City shall notify Grantee in writing, stating with reasonable specificity the nature of the alleged default. Grantee shall have thirty (30) days from the receipt of such notice to:

1. Respond to the City, contesting the City's assertion that a default has occurred, and requesting a hearing in accordance with subsection (B), below; or

2. Cure the default; or

3. Notify the City that Grantee cannot cure the default within the thirty (30) days, because of the nature of the default. In the event the default cannot be cured within thirty (30) days, Grantee shall promptly take all reasonable steps to cure the default and notify the City in writing and in detail as to the exact steps that will be taken and the projected completion date. In such case, the City may set a hearing in accordance with subsection (B) below to determine whether additional time beyond the thirty (30) days specified above is indeed needed, and whether Grantee's proposed completion schedule and steps are reasonable. Upon five (5) business days' prior written notice, either the City or Grantee may call an informal meeting to discuss the alleged default.

(B) If Grantee does not cure the alleged default within the cure period stated above, or by the projected completion date under subsection (A)(3), or denies the default and requests a hearing in accordance with subsection (A)(1), or the City orders a hearing in

accordance with subsection (A)(3), the City Council shall set a public hearing to investigate said issues or the existence of the alleged default. The City shall notify Grantee of the hearing in writing and such hearing shall take place no sooner than fourteen (14) days after Grantee's receipt of notice of the hearing. At the hearing, Grantee shall be provided an opportunity to be heard and to present evidence in its defense. The City Council's determination as to whether a default or a material breach of this Agreement has occurred shall be subject to judicial review in a court of competent jurisdiction.

(C) If, after the public hearing, the City Council determines that a default or material breach still exists, the City shall order Grantee to correct or remedy the default or breach within seven (7) business days or within such other longer timeframe as the City shall determine. In the event Grantee does not cure within such time to the City's reasonable satisfaction, the City may revoke this Agreement.

15.2 Alternative Remedies. No provision of this Agreement shall be deemed to bar the right of the City to seek or obtain judicial relief from a violation of any provision of the Agreement or any rule, regulation, requirement or directive promulgated thereunder. Neither the existence of other remedies identified in this Agreement nor the exercise thereof shall be deemed to bar or otherwise limit the right of the City to recover monetary damages for such violations by Grantee, or to seek and obtain judicial enforcement of Grantee's obligations by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity.

15.3 Revocation.

(A) In addition to revocation in accordance with other provisions of this Agreement, the City may revoke this Agreement and rescind all rights and privileges associated with this Agreement in the following circumstances, each of which represents a material breach of this Agreement:

1. If Grantee, after written notice and a reasonable opportunity to cure, continues to fail to perform or attempts to evade any material obligation under this Agreement or under any other agreement, ordinance or document between the City and Grantee;

2. If Grantee abandons the Cable System, or terminates the Cable System's operations;

3. If Grantee fails to restore service to the Cable System or institutional networks after three consecutive days of an outage or interruption in service; except when approval of such outage or interruption is obtained from the City, it being the intent that there shall be continuous operation of the Cable System;

4. If the Grantee becomes insolvent, unable or unwilling to pay its debts, or is adjudged bankrupt, or there is an assignment for the benefit of Grantee's creditors, or all or part of the Grantee's Cable System is sold under an instrument to secure a debt and is not redeemed by Grantee within thirty (30) days from said sale; or

5. This Agreement may be revoked one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of the Grantee (at the option of the City and subject to applicable law) whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless elsewhere provided herein.

(B) The City shall provide Grantee written notice of its intent to consider revocation under this subsection and hold a hearing and provide Grantee due process and the opportunity to cure in accordance with the provisions of Section 15.1 of this Agreement.

15.4 Reservation of Rights. Unless otherwise set forth in this Agreement, each party expressly reserves any right it may now have or be hereafter granted under federal or state law. The rights of the City under this Agreement shall not be read to limit any immunities the City may enjoy under Federal, or State or local law.

SECTION 16. ABANDONMENT

16.1 Effect of Abandonment. If the Grantee abandons its Cable System during the term of this Agreement or fails to provide continuous service, the City, at its option, may operate the Cable System; designate another entity to operate the Cable System temporarily until the Grantee restores service under conditions acceptable to the City, or until the Agreement is revoked and a new franchisee is selected by the City; or obtain an injunction requiring the Grantee to continue operations. If the City is required to operate or designate another entity to operate the Cable System, the Grantee shall reimburse the City or its designee for all reasonable costs, expenses and damages incurred.

16.2 What Constitutes Abandonment. The Grantee shall be deemed to have abandoned the System and the City shall be entitled to exercise its options if: the Grantee willfully or without cause fails to provide Cable Service to a substantial portion of the Franchise Area for forty-eight (48) consecutive hours, unless the City authorizes a longer interruption of service.

SECTION 17. TRANSFER

17.1 A transfer of the franchise to any Person controlling, controlled by or under the same common control as the Grantee shall not require prior City approval. The Transferee shall represent to the City that it has the legal, technical and financial qualifications to fulfill the Franchise. A breach of that representation shall be a material breach of the Franchise.

17.2 A Transfer pursuant to this Section shall not be deemed to waive any rights of the City to subsequently enforce noncompliance issues relating to the franchise.

17.3 In no event shall a transfer of this Franchise be effective without the transferee becoming a signatory to this Agreement and assuming all of the rights and obligations hereunder.

SECTION 18. MISCELLANEOUS PROVISIONS

18.1 Notices. Throughout the term of the Agreement, each party shall maintain and file with the other a local address for the service of notices by mail. All notices shall be sent to such respective address, and such notices shall be effective upon the date of mailing. At the effective date of this Agreement:

Grantee's address shall be: Time Warner Cable
Lincoln Division
5400 S. 16th Street
Lincoln, Nebraska 68512
Attention: Division President

With a copy to: Time Warner Cable
Corporate Office
290 Harbor Drive
Stamford, CT 06902
Attention: General Counsel

The City's address shall be:

CITY OF LINCOLN, NEBRASKA
555 South 10th Street
Lincoln, Nebraska 68508
Attention: Steve Huggenberger,
Assistant City Attorney

18.2 Costs to be Borne by Grantee. Grantee shall pay for all costs of publication of this Agreement.

18.3 Binding Effect. This Agreement shall be binding upon the parties hereto, their permitted successors and assigns.

18.4 Authority to Amend. This Agreement may be amended at any time by written agreement between the parties.

18.5 Rights of Third Parties. This Franchise is not intended to, and shall not be construed to, grant any rights to or vest any rights in third parties, unless expressly provided herein.

18.6 Governing Law. This Agreement shall be governed in all respects by the laws of the State of Nebraska.

18.7 Captions. The captions and headings of this Agreement are for convenience and reference purposes only and shall not affect in any way the meaning or interpretation of any provisions of this Agreement.

18.8 No Joint Venture. Nothing herein shall be deemed to create a joint venture or principal agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third persons or the public in any manner which would indicate any such relationship with the other.

18.9 Waiver. Except as expressly provided herein, the failure of the City at any time to require performance by the Grantee of any provision hereof shall in no way affect the right of the City hereafter to enforce the same. Nor shall the waiver by the City of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision, or as a waiver of the provision itself or any other provision.

18.10 Compliance with Federal, State and Local Laws.

(A) This agreement shall at all times be subject to applicable local, state and federal law, except as specifically provided otherwise.

(B) If any federal or State law or regulation shall require or permit City or Grantee to perform any service or act or shall prohibit City or Grantee from performing any service or act which may be in conflict with the terms of this Franchise, either party shall notify the other of the point in conflict believed to exist between such law or regulation. Grantee and

City shall conform to State laws and regulations regarding cable communications as they become effective, unless otherwise stated, and to conform to federal laws and regulations as they become effective.

(C) In the event that federal or state laws or regulations preempt a provision or limit the enforceability of a provision of this Franchise, the provision shall be read to be preempted to the extent and for the time, but only to the extent and for the time, required or necessitated by law. In the event such federal or state law or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the City.

(D) If any term, condition or provision of this Franchise or the application thereof to any Person or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition or provision to Persons or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Franchise and all terms, provisions and conditions hereof shall, in all other respects, continue to be effective. In the event such law or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision which had been held invalid or modified is no longer in conflict with the law and regulations then in effect, said provision shall thereupon return to full force and effect and shall thereafter be binding on Grantee and City without further action by the City.

18.11 Grantee Acknowledgment of Validity of Franchise. The Grantee acknowledges that it has had an opportunity to review the terms and conditions of this Franchise and that under current law Grantee believes that said terms and conditions are not unreasonable or arbitrary, and that Grantee believes City has the power and legal authority to make the terms and conditions contained in this Franchise.

18.12 Entire Agreement.

(A) This Agreement and all Exhibits represent the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersede all prior oral negotiations between the parties, including any prior franchises, cable ordinances or proposals.

(B) For purposes of this agreement and section 5.15.080 of the Cable Communications Ordinance, the parties acknowledge that there are no franchise application or requests for proposals.

18.13 Cumulative Rights. All rights and remedies given to the City by this Franchise or retained by the City herein shall be in addition to and cumulative with any and all other rights and remedies, existing or implied, now or hereafter available to City, at law or in equity, and such rights and remedies shall not be exclusive, but each and every right and remedy specifically given by this Franchise or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by City and the exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy.

18.14 Force Majeure. The Grantee shall not be deemed in default of provisions of this Franchise or the City Code (and the Grantee shall not be subject to any sanction, or enforcement measure of any kind whatsoever) where performance was rendered impossible by war or riots, labor strikes or civil disturbances, extreme weather, floods, or other causes beyond the Grantee's

control, and the Franchise shall not be revoked or the Grantee penalized for such noncompliance, provided that the Grantee, when possible, takes immediate and diligent steps to bring itself back into compliance and to comply as soon as possible, under the circumstances, with the Franchise without unduly endangering the health, safety and integrity of the Grantee's employees or property, or the health, safety and integrity of the public, the Rights-of-way, public property or private property.

18.15 Non-Waiver. Unless otherwise set forth in this Agreement, neither party waives any right, immunity, limitation or protection otherwise available to such party, its officers, employees or agents under federal or state law.

18.16 Costs. Any cost to be borne by the Grantee may, at the discretion of the Grantee, be passed through to the Grantee's customers unless otherwise prohibited by applicable law.

18.17 Miscellaneous Fees. Grantee shall not be required to and shall be relieved of any requirement to remit any franchise renewal application fee to the City or to reimburse the City for any franchise renewal consultant services.

IN WITNESS WHEREOF, this Agreement is signed in the name of the City of Lincoln, Nebraska, a municipal corporation, this date _____.

ATTEST:

CITY OF LINCOLN, NEBRASKA,
a municipal corporation,

_____
City Clerk

_____
Coleen J. Seng, Mayor of Lincoln

TIME WARNER ENTERTAINMENT-
ADVANCE NEWHOUSE PARTNERSHIP,

Elizabeth A. Faulkner Jr.
Title: President - Nebraska Division

CITY OF LINCOLN, NEBRASKA

CABLE TELEVISION FRANCHISE

AGREEMENT

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AGREEMENT

This Agreement ("Agreement") is entered into in Lincoln, Nebraska this day of _____, 2005, by and between Time Warner Entertainment -Advance/Newhouse Partnership, doing business as Time Warner Cable ("Grantee"), and the CITY OF LINCOLN, NEBRASKA, a municipal corporation, (the "City"). The City and the Grantee are sometimes referred to hereinafter collectively as the "parties."

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

WHEREAS, the public has had adequate notice and opportunity to comment on Grantee's proposal to provide cable television service within the City; and

WHEREAS, the City has a legitimate and necessary regulatory role in ensuring the availability of state-of-the-art cable communications service, high technical capability and reliability of Cable Systems in its jurisdiction, the availability of local programming (including educational and governmental access programming) and quality customer service; and

WHEREAS, diversity in cable service and local and non-local programming is an important policy goal and the Grantee's Cable System should offer a wide range of programming services; and

WHEREAS, flexibility to respond to changes in technology, subscriber interests and competitive factors should be an essential characteristic of this Agreement and both the City and the Grantee will stress maximum system flexibility to take advantage of new technology to benefit subscribers and citizens as such technology becomes available; and

WHEREAS, the City is authorized to grant one or more nonexclusive franchises to construct, operate and maintain a cable television system within the boundaries of the City.

NOW, THEREFORE, in consideration of the mutual promises made herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the City and Grantee do hereby agree as follows:

SECTION 1. DEFINITIONS

For the purposes of this Agreement, and all exhibits attached hereto, the following terms, phrases, words and their derivations shall have the meanings given herein. Words defined in the Cable Communication Code shall have the meanings given therein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning. The word "shall" is always mandatory and not merely directory.

1.1 "Access" means the availability for use by various agencies, institutions, organizations, groups and individuals in the community, including the City and its designees, of the Cable System to distribute downstream, non-commercial video programming (including alpha numeric programming) as permitted under applicable law, including, but not limited to cablecasting spots to promote public or governmental announcements for services or programs that do not compete with services or programs offered by a Grantee.

(A) "Educational Access" means Access where Schools are the primary users having editorial control over non-commercial programming, signals and services.

(B) "Governmental Access" means Access where governmental institutions or their designees are the primary users having editorial control over non-commercial programming, signals and services; and

(C) "Public Access" means Access where members of the public are the primary users.

1.2 "Activation" or "Activated" means the status of any capacity on or part of the Cable System wherein the use of that capacity or part thereof may be made available without further installation of system equipment, whether hardware or software.

1.3 "Agreement" or "Franchise" means this document in which this definition appears, which is executed between the City and Grantee, containing the specific provisions of the authorization granted, including any exhibits attached hereto and incorporated herein.

1.4 "Bad Debt" means amounts lawfully owed by a customer and accrued as revenues on the books of Grantee, but not collected after reasonable efforts by Grantee.

1.5 "Broadcast Signal" means a television or radio signal transmitted over the air to a wide geographic audience, and received by a Cable System off-the-air by antenna, microwave, satellite dishes or any other means.

1.6 "Cable Acts" means the Cable Communications Policy Act of 1984, and the Cable Television Consumer Protection and Competition Act of 1992, as amended by the Telecommunications Act of 1996, regulations promulgated pursuant to such Acts, and any amendments or future federal cable television laws, acts or regulations.

1.7 "Franchise Area" means the area within the jurisdictional boundaries of the City, including any areas annexed by the City during the term of this Agreement

1.8 "Franchise Fee" means any tax, fee or assessment of any kind imposed by the City or other governmental entity on the Grantee or Subscriber, or both, solely because of their status as such. The term "Franchise Fee" does not include:

(A) 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);

(B) Capital costs which are required under this Agreement to be incurred by Grantee for public, educational or governmental access equipment and facilities;

(C) 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

(D) Any fee imposed under Title 17, United States Code.

1.9 "Gross Revenues" means any and all revenues, (including cash, credits, or other consideration of any kind or nature not enumerated below but is "revenue" under generally accepted accounting principles ("GAAP")) arising from, attributable to or in any way derived

directly or indirectly by the Grantee, its Affiliates or by any other entity that is a cable operator of the Cable System, from the operation of the Grantee's Cable System within the Franchise Area to provide Cable Services. Gross Revenues include, by way of illustration and not limitation:

- monthly fees charged Subscribers for Basic Service, expanded Basic Service, optional, premium, per channel, pay-per-view, video on demand or per program service;
- installation, disconnection, reconnection and change-in-service fees;
- leased channel fees;
- remote controls;
- late fees;
- revenues from rentals or sales of converters or other equipment;
- advertising revenues;
- revenues from program guides;
- additional outlet fees;
- Franchise Fees;
- interactive services to the extent they are a Cable Service;
- revenues from home shopping.

Gross Revenues shall include revenues received by an entity other than the Grantee, an Affiliate or another entity that operates the System where necessary to prevent evasion or avoidance of the obligation under this Agreement to pay the Franchise Fees.

Gross Revenues shall not include: (i) bad debt; provided, however, that all or part of any such bad debt that is written off but subsequently collected shall be included in Gross Revenues in the period collected; or (ii) any taxes on services furnished by the Grantee which are imposed directly on any Subscriber or user by the State or other governmental unit and which are collected by the Grantee on behalf of said governmental unit (a Franchise Fee is not such a tax and is included within Gross Revenues); or (iii) the revenue of any Person where such revenue has otherwise been included in the Grantee's revenue for franchise fee calculation purposes (so as to prevent revenue from being subject to a franchise fee twice); or (iv) money collected by the Grantee on behalf of the FCC in satisfaction of regulatory fees imposed upon the Grantee under Section 47 U.S.C. 159 of federal law; (v) launch support; (vi) coop marketing; (vii) payments or other consideration received from programmers for carriage of programming on the System; (vi) advertising agency commissions; and (vii) the revenue collected by the Grantee in satisfaction of the Educational and Government Access support fee required under the Franchise Agreement.

In the event Grantee receives consideration from the provision of Cable Service in the City from a source not specifically identified above, any franchise fee obligations will be determined pursuant to GAAP. If such consideration is "revenue" under GAAP then such consideration shall be included in Gross Revenues for franchise fee purposes. If such consideration is not "revenue" under GAAP then such consideration shall not be included in Gross Revenues.

If Grantee or an Affiliate bundles, ties, or combines the sale of some or all of its Cable Services with non-cable services, whether authorized or not by the Franchise, and if it is necessary to separately determine Gross Revenues attributable to particular Cable Services in order to determine franchise fees owed to the City, the Grantee shall allocate revenues, to the extent consistent with any applicable state or federal law or tariffs, in a manner so as to accurately reflect the actual revenue from Cable Services, taking into account all relevant factors, including generally available package prices and discounts. Grantee shall provide a statement with its franchise fee payment reflecting the methodology used and shall bear any burden of proof regarding whether the methodology used accurately reflects Cable Service revenues.

1.10 "Person" means any natural person, sole proprietorship, partnership, joint venture, association, or limited liability entity or corporation, or any other form of entity or organization.

1.11 "Rights-of-Way" shall mean the surface of and space above and below any real property in the City in which the City has an interest as an owner or as a trustee for the public for purposes of public travel, as they now or hereafter exist, including, but not limited to, all public streets, highways, avenues, roads, alleys, easements, sidewalks, tunnels, viaducts, or bridges; provided, however, this shall not include other public property for which a separate authorization and agreement to utilize any part of same shall be required from the City.

1.12 "System" means Grantee's Cable System.

SECTION 2. GRANT OF AGREEMENT

2.1 Grant

(A) The City hereby grants to Grantee a nonexclusive and revocable authorization (the "Franchise") to make lawful use of the Streets within the Franchise Area to construct, operate, maintain, reconstruct, rebuild and upgrade a Cable System subject to the terms and conditions set forth in this Agreement and applicable law. This Agreement shall constitute both a right and an obligation to construct, operate, maintain, reconstruct, rebuild and upgrade a Cable System as required hereby, and to fulfill the obligations set forth in, the provisions of this Agreement all subject to applicable law.

(B) The Grantee, through this Agreement, is granted the right to operate its Cable System using the City's Rights-of-Way within the Franchise Area in compliance with all applicable laws. Nothing in this Agreement shall be deemed to waive the requirements of the other codes and ordinances of general applicability enacted, or hereafter enacted, by the City.

(C) Grantee promises and guarantees, as a condition of exercising the privileges granted by this Agreement, that any Affiliate of the Grantee directly involved in the offering of Cable Service in the Franchise Area, or directly involved in the management or operation of the Cable System in the Franchise Area, will also comply with the terms and conditions of this Agreement.

(D) This Agreement is intended to convey limited rights and interests only as to those Rights-of-Ways in which the City has an actual interest. It is not a warranty of title or interest in any Right-of-Way; it does not provide the Grantee with any interest in any particular location within the Right-of-Way and it does not confer rights other than as expressly provided in the grant hereof. This Agreement does not provide the Grantee with any right of eminent domain.

(E) To the extent permitted by law, this Agreement shall not limit the City or Grantee's rights with respect to the provision of telecommunications services.

2.2 Use of Public Rights-of-Way

(A) Subject to the City's supervision and control, Grantee may erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the Rights-of-Way within the Franchise Area, such wires, cables, conductors, ducts, conduit, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of a Cable System within the Franchise Area. Grantee shall comply with all applicable laws.

(B) This grant does not include the installation, maintenance or construction, repair or replacement of any wireless telecommunications facilities or equipment within Rights-of Way or otherwise on City-owned property or on property held in trust or used by the City except for facilities or equipment used by the Grantee for status monitoring of Grantee's Communication Facility; equipment utilized to provide "last mile" connectivity to a Subscriber who could not economically be serviced otherwise; or upon approval by the City which shall not be unreasonably withheld, other wireless transmit/receive equipment incidental to the operation of Grantee's Communication Facility.

2.3 Term. The term of this Agreement and all rights, privileges, obligations and restrictions pertaining thereto shall be fifteen (15) years from the effective date of this Agreement as set forth in Section 2.4 below, unless terminated sooner as hereinafter provided.

2.4 Effective Date

(A) This Agreement and the rights, privileges and authority granted hereunder shall take effect and be in force from and after the effective date of this Agreement as specified in this Section.

(B) Within thirty (30) days after the effective date of the Ordinance granting this Agreement, Grantee shall signify its acceptance of this Agreement by executing a written acceptance of this Agreement. This franchise is void unless accepted in writing by Grantee within this timeframe.

(C) The effective date of this Agreement shall be the date on which it is accepted in writing by Grantee.

(D) The grant of this Agreement shall have no effect on the Grantee's duty under the prior franchise agreement or any ordinance in effect prior to the effective date of this Agreement to indemnify or insure the City against acts and omissions occurring during the period that the prior franchise agreement was in effect. Nor shall it have any affect upon liability to pay all Franchise Fees which were due and owed under prior franchises and ordinances.

2.5 Agreement Nonexclusive. This Agreement shall be nonexclusive, and subject to all prior rights, interests, easements or licenses granted by the City or its predecessors to any Person to use any property, Right-of-Way, easement, right, interest or license for any purpose whatsoever, including the right of the City to use same for any purpose it deems fit, including the same or similar purposes allowed Grantee hereunder. The City may at any time grant authorization to use the Rights-of-Way for any purpose not incompatible with Grantee's authority under this Agreement and for such additional agreements for Cable Systems as the City deems appropriate.

2.6 Grant of Other Agreements

(A) This Agreement shall be non-exclusive and the City reserves the right to grant to any other Person, at any time, the right to use or occupy the Streets or roads of the City for the construction and operation of any other Cable System, open video system or other multichannel video distribution system within the City or for whatever purposes deemed appropriate by the City. It is understood that nothing herein shall be construed to create any obligation to share any Access or Community Programming developed by Grantee with any other provider, except as specified by the City. Notwithstanding anything to the contrary, no such authorization or franchise granted to any other Person (whether by the City, State or Federal government) to operate a Cable System shall be on terms or conditions more favorable or less burdensome when taken as a whole than those imposed herein. Specifically, any franchisee shall be subject to the same requirements pertaining to the service area, contributions to the City's fiber system and PEG access as are imposed under this Agreement. In the event that such a franchise agreement is granted, pursuant to State or Federal law, on terms more favorable or less burdensome than those imposed in this agreement, then Grantee shall have the benefit of those more favorable terms.

(B) In the event the City or any operating division, department, agent or Franchisee of the City elects to build or operate its own Cable System or open video system, or leases dark fiber, poles or other facilities to third-party providers, neither the City nor any operating division, department or agent of the City shall discriminate against the Grantee in pole attachment fees, permitting procedures, permitting fees and relocation practices.

(C) If the City, or any operating division or department thereof, including Lincoln Electric Service, grants another Franchise or enters into any lease of facilities so as to enable a third party to offer Cable Service, and which requires the Grantee to relocate any of its facilities to accommodate such third party's use of the rights-of-way, easements or poles, the third party shall be required to reimburse Grantee for the actual costs of such relocation.

2.7 Effect of Acceptance. By accepting the Agreement, the Grantee acknowledges and accepts the City's legal right to issue and enforce the Agreement subject to applicable law and agrees that the Agreement was granted pursuant to processes and procedures consistent with federal law.

2.8 Police Powers.

(A) In accepting this Franchise, Grantee acknowledges that its rights hereunder are subject to the police powers of the City to adopt and enforce general ordinances necessary to the safety and welfare of the public and it agrees to comply with all applicable general laws and ordinances enacted by the City pursuant to such power. Any conflicts between the provisions of this Franchise Agreement and any other present or future lawful exercise of the City's police power shall be resolved in favor of the latter, except that any such exercise that is not of a general application in the jurisdiction or applies exclusively to Grantee which contains provisions inconsistent with this Agreement shall prevail only if, upon such exercise, the City finds that an emergency exists constituting a danger to health, safety, property, or general welfare or such exercise is mandated by law.

(B) Except for the City's exercise of its police powers, pursuant to this section this Agreement may only be modified or amended with the express written consent of the Grantee.

2.9 Franchise Area. Grantee shall offer Cable Service to every Person in the Franchise Area in accordance with the service extension provisions of this Agreement. In the

event of annexation, Grantee shall offer Cable Services within six (6) months of notification of the annexation.

SECTION 3. FRANCHISE FEE AND FINANCIAL CONTROLS

3.1 Franchise Fee. As compensation for the benefits and privileges granted under this Agreement and in consideration of permission to use the City's Streets, Grantee shall pay as a Franchise Fee to the City, throughout the duration of this Agreement, an amount equal to five (5%) percent of Grantee's Gross Revenues. Accrual of such Franchise Fee shall commence as of the effective date of this Agreement. Grantor reserves the right to unilaterally increase the franchise fee to the maximum that may be charged consistent with federal and state law.

3.2 Payments. Grantee's Franchise Fee payments to the City shall be computed quarterly for the preceding calendar quarter ending September 30, December 31, March 31 and June 30. Each quarterly payment shall be due and payable no later than thirty (30) days after said dates.

3.3 Quarterly Agreement Fee Reports. Each payment shall be accompanied by a written report to the City, verified by a responsible official of Grantee, containing an accurate statement in summarized form, as well as in detail, of Grantee's Gross Revenues and the computation of the payment amount. Such reports shall detail all Gross Revenues of the Cable System. In the event this Agreement is revoked or otherwise terminated prior to its expiration date, the Grantee shall file with the City, within ninety (90) days of the date of revocation or termination, a C.P.A. certified revenue statement showing the Gross Revenues received by it since the end of the previous year and shall make adjustments at that time for the Franchise Fee due up to the date of revocation or termination.

3.4 No Accord and Satisfaction. No acceptance of any payment shall be construed as an accord by the City that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the City may have for further or additional sums payable or for the performance of any other obligation of Grantee.

3.5 Audits. No more than once every three (3) years the City shall have the right to conduct audits of Grantee's records related to the Franchise Fee payments made pursuant to this Agreement. No audit may go back more than five (5) years. In the event the amount owed as a result of the findings of such audit is in excess of four percent (4%) of the Franchise Fees paid by Grantee during the audited period, Grantee shall pay City's out-of-pocket expenses associated with such audit.

3.6 Financial Records. Grantee agrees to meet with a representative of the City upon request to review Grantee's methodology of record keeping related to the computation of the Franchise Fee.

3.7 Late Franchise Fee Payments. In the event any Franchise Fee payment is not received within thirty (30) days from the end of the calendar quarter, Grantee shall be assessed a late fee and may be assessed interest in accordance with the City's Cable Communications Ordinance.

3.8 Compensation. In the event the obligation of Grantee to compensate the City through Franchise Fees as set forth in this Franchise is lawfully suspended or eliminated, in whole or part, then the Grantee shall, to the extent required by applicable law, pay to the City equivalent compensation to the compensation paid to the City by other similarly situated users of the Streets for Grantee's use of the Streets, provided that in no event shall such payments exceed

the equivalent of five percent (5%) of the Grantee's Gross Revenues or such other cap required by applicable law.

3.9 Payment on Termination. If this Agreement is revoked pursuant to the terms of this Agreement, the Grantee shall, as per Section 3.3, file with the City within ninety (90) calendar days of the date of the revocation, a gross revenue statement, certified by a certified public accountant, showing the Gross Revenues received by the Grantee since the end of the previous fiscal year. The City reserves the right in the event of revocation or expiration (if no application for renewal or appeal related thereto is pending), to satisfy any remaining financial obligations of the Grantee to the City by utilizing the funds available in a Letter of Credit or other security provided by the Grantee.

3.10 Tax Liability. The Franchise Fees shall be in addition to any and all taxes or other levies or assessments which are now or hereafter required to be paid by businesses in general by any law of the City, the State of Nebraska or the United States including, without limitation, sales, use and other taxes, business license fees or other payments. Payment of the Franchise Fee under this Agreement shall not exempt the Grantee from the payment of any license fee, tax or charge on business, occupation, property or income that may be imposed by the City. Any other license fees, taxes or charges shall be of general applicability in nature and shall not be levied against the Grantee solely because of its status as a Grantee as defined herein.

SECTION 4. ADMINISTRATION AND REGULATION

4.1 Authority. The City shall be vested with the power and right to administer and enforce the requirements of this Agreement or to delegate that power and right, or any part thereof, to the extent permitted under Federal, State or local law, to any agent.

4.2 Rates and Charges. All Grantee rates and charges related to or regarding Cable Services shall be subject to regulation by the City to the full extent authorized by applicable Federal or State laws.

4.3 Filing of Rates and Charges. Upon request of City, Grantee shall file with the City a complete schedule of rates and charges for Cable Services and leased Access Channels provided under this Agreement.

4.4 Late Fees. Fees for the late payment of bills shall not be assessed until after the Service has been fully provided.

4.5 Performance Evaluation.

(A) Evaluation sessions may be held at any time by the City during the term of this Agreement, but no more frequently than annually.

(B) All evaluation sessions shall be open to the public and announced at least one week in advance in a newspaper of general circulation in the City. City shall notify Subscribers of all regular evaluation sessions by announcement on at least one Access Channel seven (7) times between the hours of 7:00 a.m. and 9:00 p.m. for five (5) consecutive days preceding each session.

(C) Topics which may be discussed at any evaluation session may include, but are not limited to, Cable Service rate structures; Franchise Fees; occupation taxes; liquidated damages; free or discounted Cable Services; application of new technologies; system performance; Cable Services provided; programming offered; customer complaints; privacy;

amendments to this Agreement; judicial and FCC rulings; line extension policies; and the City's or Grantee's rules; provided that nothing in this subsection shall be construed as requiring the renegotiation of this Agreement.

(D) During evaluations under this Section, Grantee shall fully cooperate with the City and shall provide such information and documents as the City may lawfully and reasonably require to perform the evaluation.

(E) As a result of a periodic review or evaluation session, upon notification from City, Grantee shall meet with City and undertake good faith efforts to reach agreement on changes and modifications to the terms and conditions of this Franchise which are both economically and technically feasible.

SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS

5.1 Indemnification

(A) General Indemnification. Upon timely notice and tender as set forth in Section 5.1(D), Grantee shall indemnify, defend and hold the City, its officers, elected and appointed officials, boards, committees, commissions, agents, volunteers, and employees, harmless from any action or claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and attorneys' fees or expenses, in any way arising out of, resulting from, or alleged to arise out of or result from any construction, excavation, operation, maintenance, reconstruction, or any other act done under this Agreement, by or for Grantee, its agents, or its employees, or arising out of, resulting from, or alleged to arise out of or result from any neglect or omission of Grantee. Grantee shall consult and cooperate with the City while conducting its defense of the City.

(B) Indemnification for Relocation. Grantee shall indemnify the City for any damages, claims, additional costs or expenses assessed against, or payable by, the City related to, arising out of, or resulting, directly or indirectly, from Grantee's failure to remove, adjust or relocate any of its facilities in the Streets in a timely manner in accordance with any relocation lawfully required by the City.

(C) Non-waiver. The fact that Grantee carries out any activities under this Agreement through independent contractors shall not constitute an avoidance of or defense to Grantee's duty of defense and indemnification under Section 5.1 (A).

(D) Duty to Give Notice and Tender Defense. The City shall give the Grantee timely written notice of any claim or of the commencement of any action, suit or other proceeding covered by the indemnity in this Section. In the event any such claim arises, the City or any other indemnified party shall timely tender the defense thereof to the Grantee and the Grantee shall have the obligation and duty to defend any claims arising thereunder, and the City shall cooperate fully therein.

(E) The indemnification of Section 5.1 (A) shall survive the term of any franchise and shall continue in full force and effect as to the Grantee's responsibility to indemnify. In no event shall the indemnification requirements of this Section 5.1 be construed to impose any obligation on the part of Grantee, its agents or employees to indemnify the City, its agents or employees or with respect to Government Access programming, or any utilization of the City's network, or the City's operation of the emergency over-ride system pursuant to section 14.2 (B).

5.2 Insurance Requirements.

(A) General Requirement. Grantee must have adequate insurance during the entire term of this Agreement to protect the City against claims for injuries to Persons or damages to property which in any way relate to, arise from or are connected with this Agreement, or involve Grantee, its agents, representatives, contractors, subcontractors and their employees. However, no coverage shall be provided for claims arising out of or due to the sole negligence of the City.

(B) Initial Insurance Limits. Grantee must keep insurance in effect in accordance with the minimum insurance limits herein set forth below. The Grantee shall obtain policies for the following initial minimum insurance limits:

1. Commercial General Liability: Five million dollars ($5,000,000) aggregate limit per occurrence for bodily injury, personal injury and property damage;

2. Automobile Liability: Two million dollars ($2,000,000) combined single limit per accident for bodily injury and property damage; and

3. Employer's Liability: Two million dollars ($2,000,000).

5.3 Deductibles and Self Insured Retentions. If Grantee changes its policy to include a self-insured retention, the Grantee shall give notice of such change to the City. The City's approval will be given if the self-insured retention is consistent with standard industry practices. Any deductible or self-insured retention of the policies shall not in any way limit Grantee's liability to the City. The insurance limits set forth above shall be adjusted from time to time upon notice to the Grantee but in no event shall the insurance amounts required under this Agreement exceed the maximum municipal liability under State law.

(A) Endorsements.

1. All policies shall contain, or shall be endorsed so that:

(a) The City, its officers, officials, boards, commissions, employees and agents are to be covered as, and have the rights of, named additional insured with respect to liability related to, arising out of by reason of activities performed by, or on behalf of, Grantee under this Agreement or applicable law, or in the construction, operation or repair, or ownership of the Cable System;

(b) The Grantee's insurance coverage shall be primary insurance with respect to the City, its officers, officials, boards, commissions, employees and agents. Any insurance or self insurance maintained by the City, its officers, officials, boards, commissions, employees and agents shall be in excess of the Grantee's insurance and shall not contribute to it; and

(c) Grantee's insurance shall apply separately to each insured against whom a claim is made or lawsuit is brought, except with respect to the limits of the insurer's liability.

2. The insurance shall provide that it shall not be cancelled or materially altered so as to be out of compliance with the requirements of this section without thirty (30) days' written notice first being given to the City. If the insurance is cancelled or materially altered so as to be out of compliance with the requirements of this section within the term of this Agreement, Grantee shall provide a replacement policy. Grantee agrees to maintain

continuous uninterrupted insurance coverage, in the amounts required, for the duration of this Agreement.

(B) Verification of Coverage. The Grantee shall furnish the City with certificates of insurance and endorsements or a copy of the page of the policy reflecting blanket additional insured status. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy are to be on standard forms or such forms as are consistent with standard industry practices, and are to be received subject to approval by City as to compliance with Section 5.2 and 5.3 herein prior to the commencement of activities associated with this Agreement. The Grantee hereby warrants that its insurance policies satisfy the requirements of this Agreement and City laws.

(C) In the alternative to providing a certificate of insurance to the City certifying insurance coverage as required above, Grantee's self-insurance shall provide the same amount and level of protection for Grantee and the City, its officers, officials, boards, commissions, agents and employees as otherwise required under this Section. The adequacy of the self-insurance shall be subject to the periodic review and approval of the City. If Grantee elects to provide self-insurance under this Section, any failure to maintain adequate self-insurance shall be cause for immediate termination of this Agreement by the City.

5.4 Letter of Credit

(A) On the Effective Date of this Franchise, the Grantee shall deliver to the City an irrevocable and unconditional Letter of Credit, in a form and substance acceptable to the City, from a National or State bank approved by the City, in the amount of $100,000.00.

(B) The Letter of Credit shall provide that funds will be paid to the City upon written demand of the City, and in accordance with the terms of this Agreement, in payment for liquidated damages charged pursuant to this Section, in payment for any monies owed by the Grantee to the City pursuant to its obligations under this Franchise, or in payment for any damage incurred by the City as a result of any claims arising out of acts or omissions by the Grantee pursuant to this Franchise.

(C) As an alternative to recovery of any monies owed by the Grantee to the City for actual damages to the City as a result of any claims arising out of acts or omissions by the Grantee pursuant to the Franchise, the City, in its sole discretion, may charge to and collect from the Letter of Credit the following liquidated damages:

1. For failure to provide data, documents, reports or information as required herein, the liquidated damage shall be $250.00 per day for each day, or part thereof, such failure occurs or continues.

2. For failure to comply with construction, operation or maintenance standards, the liquidated damage shall be $350.00 per day for each day, or part thereof, such failure occurs or continues.

3. For failure to comply with any of the material provisions of this franchise, for which a liquidated damage is not otherwise specifically provided pursuant to this paragraph (C), the liquidated damage shall be $500.00 per day for each day, or part thereof, such failure occurs or continues.

(D) Each violation of any material provision of this Franchise shall be considered a separate violation for which a separate liquidated damage can be imposed.

(E) Whenever the Mayor determines that there is a basis to charge to and collect from the Letter of Credit under subparagraph (B) above or for any other violation contemplated in subparagraph (C) above, a written notice shall be given to Grantee informing it of such basis or violation. During the thirty (30) days following such notice, Grantee shall be given an opportunity to be heard by the Mayor and an opportunity to cure.

(F) Nothing contained herein shall preclude the Grantee from appearing before the City Council at any time in response to any alleged violations in accordance with the rules of the City Council.

(G) If said Letter of Credit or any subsequent Letter of Credit delivered pursuant thereto expires prior to twelve (12) months after the expiration of the term of this Franchise, it shall be renewed or replaced during the term of this Franchise to provide that it will not expire earlier than twelve (12) months after the expiration of this Franchise. The renewed or replaced Letter of Credit shall be of the same form and with a bank authorized herein and for the full amount stated in subparagraph (A) of this Section.

(H) If the City draws upon the Letter of Credit or any subsequent Letter of Credit delivered pursuant hereto, in whole or in part, the Grantee shall immediately replace or replenish it to its full amount and shall deliver to the City a like replacement Letter of Credit or certification of replenishment for the full amount as a substitution of the previous Letter of Credit. This shall be a continuing obligation for any withdrawals from the Letter of Credit.

(I) If any Letter of Credit is not so replaced or replenished, the City may draw on said Letter of Credit for the whole amount thereof and use the proceeds as satisfaction of Grantee's performance of franchise obligations to the extent necessary. The failure to replace or replenish any Letter of Credit may also, at the option of the City, be deemed a default by the Grantee under this Franchise. The drawing on the Letter of Credit by the City, and use of the money so obtained for payment or performance of the obligations, duties and responsibilities of the Grantee which are in default, shall not be a waiver or release of such default.

(J) The collection by City of any damages or monies from the Letter of Credit shall not affect any other right or remedy available to it, nor shall any act, or failure to act, by the City pursuant to the Letter of Credit, be deemed a waiver of any right of the City pursuant to this Franchise or otherwise.

SECTION 6. CUSTOMER SERVICE

6.1 Customer Service Standards. The Grantee shall comply with the customer service standards set forth by the Federal Communications Commission as amended.

SECTION 7. REPORTS AND RECORDS

7.1 Open Records. Access to the books and records of the Grantee shall be governed by Section 5.15.330 of the City's Cable Communications Ordinance.

7.2 Confidentiality. The City agrees to keep confidential any trade secrets, proprietary or confidential books records, or any other filings with City by Grantee to the extent permitted by law and may not use any such information to compete with Grantee in any manner, directly or through any operating division, department or agent. Grantee shall be responsible for clearly and conspicuously stamping the work "Confidential" on each page that contains trade secret, confidential or proprietary information, and shall provide a brief written explanation as to

why such information is trade secret, confidential or proprietary and how it may be treated as such under State or Federal law. If the City receives a demand from any Person for disclosure of any information designated by Grantee as trade secret, proprietary or confidential, the City shall, so far as consistent with applicable law, advise Grantee and provide Grantee with a copy of any written request by the party demanding access to such information within a reasonable time. City will reasonably cooperate with Grantee in any efforts by Grantee to protect the confidentiality of any such material.

7.3 Reports Required.

(A) The Grantee is expressly exempted from and relieved of compliance with Section 5.15.320 of the City's Cable Communications Ordinance. In lieu thereof the Grantee shall be subject to the requirements set forth in (B), (C) and (D) below.

(B) The Grantee shall provide the City semi-annual reports on Customer Complaints. For the purposes of this requirement Customer Complaints are defined as:

1. Written Complaints received by the Grantee and their resolution

2. Service Call summary

3. Summary of any material trend of complaints received by the Grantee

(C) The Grantee shall upon request by the City provide the City with a copy of any public (non-confidential) document that the Grantee has filed with the state or federal government and an annual summary of plant miles, homes passed, and basic subscribers.

(D) Grantee shall at all times maintain and make available for local inspection by the City upon request:

1. Records showing the location of Cable System plant installed or in use in the Franchise Area;

2. A list of Grantee's Cable Services, rates and channel lineups;

SECTION 8. PROGRAMMING AND CHANNEL CAPACITY

8.1 Provision of Programming and Channel Capacity. The Grantee shall provide the programming and Channel capacity required in this Agreement.

8.2 Broad Programming Categories. The Grantee shall offer programming in the following broad categories:

News
Weather
Sports
Public affairs
Educational
Cultural
Music
Religious

8.3 Cable Service to City Offices, Schools, Libraries. The Grantee shall provide one drop and Standard Service (defined to be the Basic Service and the next most highly penetrated tier of programming) to those buildings receiving free service as of the Effective Date of this Agreement so long as those buildings are being used for City or County government purposes. Following the Effective Date of this Agreement, new or additional buildings with City employees will receive one drop and Standard Service free of charge subject to being located within 250 feet of the Cable System. The Grantee will provide free service to state-accredited Public and Parochial K-12 schools subject to the building being located within 250 feet of the Cable System. Buildings eligible for a free drop and Standard Service but located more than 250 feet from the Cable System may still receive free service subject to reimbursing the Grantee for the actual costs of the drop in excess of 250 feet.

SECTION 9. PUBLIC, GOVERNMENT, EDUCATION ACCESS CHANNELS

9.1 The Grantee shall initially provide 5 (five) channels for non-commercial Public, Educational and Government ("PEG") access use. The channels will be initially allocated as follows:

(A) 2 channels for Public Access

(B) 2 channels for Government Access

(C) 1 channel for Educational Access

9.2 The City may reallocate the five PEG access channels among "Public", "Educational" and "Government" with the approval of the Grantee.

9.3 The Grantee shall continue to provide a secured digital video stream for Fire Department training purposes and provide the converters in training rooms at fire stations required for viewing that training channel.

9.4 The Grantee shall provide an additional channel for Educational Access, upon request of the City, at any time after the 10th anniversary of the Effective Date of this Agreement, if the then existing Educational Access channel(s) is Fully Programmed. For the purposes of this requirement, fully programmed means that the Educational Access channel(s) is programmed with Locally-Produced audio-video television programming (i.e. not character generated or bulletin board type programming) from 4 p.m. to 10 p.m. seven (7) days a week for six (6) consecutive weeks.

9.5 The Grantee shall provide an additional channel for Government Access, upon request of the City, whenever the then existing Government Access channels are Fully Programmed. For the purposes of this provision, Fully Programmed means:

(A) The Government Access channel (currently channel 5) is programmed with Locally-Produced audio-video television programming (i.e. not character generated programming) from 4 p.m. to 10 p.m. seven days a week for six consecutive weeks; and

(B) The Bulletin Board Government Access channel (currently channel 10) is programmed at least fifty percent of the time from 4 p.m. to 10 p.m. with Locally-Produced audio-video television programming (i.e. not character generated programming) seven days a week for six consecutive weeks.

9.6 For the purposes of the "triggers" set forth in this Section 9, a program may be repeated twice for the purposes of calculating the hours of programming. Additional repeats of

programming are permitted but such additional repeats shall not be counted in any usage formula set forth above.

9.7 For the purposes of the triggers set forth in this Section 9, "Locally - Produced" means audio-video television programming produced within the City of Lincoln; except, however, up to 10% of such programming may be imported from outside the City of Lincoln.

9.8 In the event Grantee converts to an all digital transmission standard, the City shall relinquish all analog spectrum and be allocated 12 MHz for audio/video PEG channels or audio/video training channels, with no triggers for additional bandwidth. Grantee shall encode the transmissions in that 12 Mhz to provide a minimum of 77.6 megabits/sec (256 QAM). At such time that Grantee provides standard encoding methods that provide greater capacity within the allocated bandwidth, the City may take advantage of that capacity. At the time of conversion, Grantee shall provide the necessary digital encoding equipment for existing PEG or training channels feeds. The City shall be responsible for purchase of encoding or grooming equipment for future additional digital PEG or training channels. Grantee shall provide on Basic Service all additional PEG channel feeds the City chooses to provide, whether standard definition or high definition feeds. Digital Programming provided for any PEG or training channel, regardless of source (the city, LPS, Grantee's studio, outside videotape or DVD, etc.) shall not have its quality reduced by Grantee (by rate shaping or down sampling or any other method) either during direct broadcast or by any method used to store the programming for later broadcast or rebroadcast, without the City's consent. Grantee may compress any analog source at rates that show no noticeable difference in quality from the original feed. Any bandwidth unused by the City may be used by Grantee.

9.9 Public Access.

(A) The Grantee shall have the exclusive responsibility for administering and operating Public Access subject to the following conditions:

1. The Grantee will operate Public Access on a non-discriminatory basis.

2. The Grantee shall not exercise any editorial control except as otherwise permitted by applicable law. Grantee shall be the final arbiter on scheduling conflicts.

3. The City or its designee may review and comment upon the Public Access rules.

(B) The Grantee shall continue to operate Public Access at the same level that it operates Public Access as of the Effective Date of this Agreement.

(C) The Grantee shall expend six hundred thousand dollars ($600,000.00) over the term of the franchise to support the capital needs of Public Access. The Grantee shall expend a minimum of $200,000 in the first five years of the term, $200,000 in the second five years of the term, and $200,000 in the third year of the term , but in no event shall the total spending requirements under this section exceed $600,000.

(D) The Grantee shall make reasonable efforts to develop an advisory group of Public Access users and to consider the suggestions from this group when making Public Access capital expenditures; provided, however, the role of the users is advisory only and all purchasing decisions shall be at the sole discretion of the Grantee.

9.10 Unused Access Channels. The City shall adopt rules that enable the Grantee to use a PEG access channel when that channel is not being used for its designated purpose.

9.11 Grants.

(A) At the time of the acceptance of the Franchise, the Grantee shall make a one-time lump sum payment to the City in the amount of $1.75 million (one million seven hundred and fifty thousand dollars).

(B) The Grantee shall collect and remit to the City $.41 (41 cents) per directly billed Basic Service customer per month (hereinafter the "G/E Grant"). The Grantee shall have no obligation to remit the G/E grant to the City until such time as Grantee has recouped the $1.75 million from directly billed Basic Service customers. Thereafter, the G/E Grant shall be remitted to the City at the time of each franchise fee payment. Grantee shall endeavor whenever possible to assess the G/E Grant on bulk accounts, but in no event shall the overall G/E Grant exceed $.41 multiplied by the number of directly billed Basic Service customers. Grantee shall provide an annual report to the City on the status of the G/E Grant calculation.

(C) The G/E (including the initial $1.75 million) Grant shall be used exclusively for the support of the capital needs associated with Government and Educational Access; provided, however, up to $.05 (5 cents) or 12.2% of the G/E Grant may be applied to the non-capital needs (operating costs) associated with Government and Educational Access. The City shall maintain the allocation outlined above for the following time periods: beginning of year 1 through the end of year 5 of the franchise term; beginning of year 6 through the end of year 8; beginning of year 9 through the end of year 12; beginning of year 13 through the end of year 15.

(D) The City shall be responsible for allocating the G/E Grant between Educational Access and Government Access. The city shall notify Grantee thirty (30) days prior to the next fiscal year on how the City will allocate the G/E Grant for that fiscal year. Upon request, the City will provide Grantee with reasonable and appropriate documentation to verify that the G/E Grant has been expended in accordance with the requirements outlined in Subsection (C).

9.12 Live Cablecasting Return Locations

(A) The Grantee shall maintain the current return paths from City Hall and the Q St. Fire Station to the Grantee's headend to accommodate programming originated by the City for the Government Access channel(s).

(B) The Grantee shall maintain the current return path from the Lincoln Public School's District Office to the Grantee's headend to accommodate programming originated by the schools for the Educational Access channel.

9.13 City Fiber Loop. The Grantee shall expend up to seven hundred and fifty thousand dollars ($750,000.00) in completing fiber loops or for electronic transport equipment connected to the fiber loop for the City's internal communications needs as requested by the City. Such fiber loops may be completed by either Grantee at Grantee's cost or by the City at the City's option. The fiber shall not be used for commercial or competitive purposes except where the City is required by applicable law to share conduit space with another user.

9.14 City Fiber Loop Extensions.

(A) The Grantee shall extend the City's fiber system to the Bluff Rd landfill at the City's request. The City will reimburse the Grantee for the actual costs of this extension

based upon the Grantee's time and materials. The City shall be responsible for securing necessary conduit and any right-of-way authorizations.

(B) The Grantee shall extend the City's fiber system to the Ashland Treatment plant at the City's request. The City will reimburse the Grantee for the actual costs of this extension based upon Grantee's time and materials. The City shall be responsible for securing necessary conduit and any right-of-way authorizations.

9.15 Payments Not Franchise Fees. Except as specifically provided in this Section 9, none of the payments required under this Section 9 shall be treated by Grantee, or considered in any way by Grantee, a Franchise Fee. All such payments shall be in addition to the Franchise Fee required of Grantee pursuant to Section 3.1 hereof. Provided that the City expends the additional financial obligations, payments and other commitments in a manner required herein, the Grantee agrees not to assert or claim at any time before any court or administrative agency that the additional financial obligations, payments and other commitments expressed herein are franchise fees, so as to form the basis for offset or credit against any payments due the City.

SECTION 10. GENERAL RIGHT-OF-WAY USE AND CONSTRUCTION

10.1 Compliance with Applicable Laws, Resolutions and Ordinances.

(A) The terms of this Franchise shall define the contractual rights and obligations of the Grantee with respect to operation of the System in the City. However, the Grantee shall at all times during the term of this Franchise be subject to the lawful exercise of the police powers of the City. The grant of this Franchise does not relieve the Grantee of its obligations to obtain any licenses, permits or other authority as may be required by the City Code, as it may be amended, for the privilege of operating a business within the City or for performing work on City property or within the Rights-of-Way, to the extent not inconsistent with this Franchise.

(B) In the event the Grantee cannot determine how to comply with any Rights-of-Way requirement of the City, whether pursuant to this Franchise or other requirement, the Grantee shall immediately provide written notice of such question, including the Grantee's proposed interpretation, to the City, in accordance with Section 18.1. The City shall provide a written response within fourteen (14) days of receipt indicating how the requirements cited by the Grantee apply. The Grantee may proceed in accordance with its proposed interpretation in the event a written response is not received within seventeen (17) days of mailing or delivering such written question.

10.2 Construction.

(A) Subject to applicable laws and the provisions of this Agreement, Grantee may perform all construction necessary for the operation of its Cable System. All construction and maintenance of any and all facilities within Rights-of-Way incident to Grantee's Cable System shall, regardless of who performs the construction, be and remain Grantee's responsibility. Grantee shall apply for, and obtain, all permits necessary for construction or installation of any facilities, and for excavating and laying any facilities, within the Rights-of-Way. Grantee shall pay all applicable permit fees required of any Person (except for the City) working in the Rights-of-Way upon issuance of the requisite construction permits by the City to Grantee.

(B) Prior to beginning any construction, Grantee shall secure any required permits for work in the Rights-of-Ways.

(C) Grantee may make excavations in Rights-of-Way for any facility needed for the maintenance or extension of Grantee's Cable System. Prior to doing such work, Grantee shall apply for, and obtain, applicable permits from the City. Whenever it is possible and reasonably practicable to joint trench or share bores or cuts, Grantee shall work with the City and other providers, licensees, permittees and franchisees so as to reduce the number of Rights-of-Way cuts within the City.

(D) In the event of an unexpected repair or emergency, a Grantee may commence such repair and emergency response work as required under the circumstances, provided the Grantee shall notify the Director of Public Works and Utilities promptly, before such repair or emergency work, or the next business morning thereafter if advance notice is not practicable.

10.3 Maintenance and Workmanship

(A) Grantee, at its own expense, shall repair, renew, change and improve its facilities to keep them in good repair and safe condition.

(B) The Grantee's Cable System shall be located, erected and maintained so as not to endanger or interfere with the safety of Persons, or so as not to unnecessarily hinder or obstruct the free use of Rights-of-Way, alleys, bridges or other public property.

(C) Repair and Restoration of Property.

1. If the Grantee reasonably knows or should have known it has damaged public or private property, it shall promptly notify the property owner within twenty-four (24) hours in writing.

2. If public or private property is disturbed or damaged, the Grantee shall restore the property equivalent to its former condition. Public Rights-of-Way or other City property shall be restored in a manner and within a timeframe approved by the City's Director of Public Works. If restoration of public Rights-of-Way or other property of the City is not satisfactorily performed within a reasonable time, the Director of Public Works may, after prior notice to the Grantee, or without notice, where the disturbance or damage creates a risk to public health or safety, or cause delay or added expense to a public project or activity, cause the repairs to be made at the Grantee's expense and recover the cost of those repairs from the Grantee. Within thirty (30) days of receipt of an itemized list of those costs, including the costs of labor, materials and equipment, the Grantee shall pay the City. If suit is brought by City or Grantee with respect to the obligations of this Section 10.3(C), the non-prevailing party shall pay all reasonable attorneys fees and costs of the prevailing party.

(D) Movement on behalf of Other Rights-of-Way users. If any removal, replacement, modification or disconnection is required to accommodate the construction, operation or repair of the facilities or equipment of another Rights-of-Way, Grantee shall, after at least thirty (30) days' advance written notice, take action to effect the necessary changes requested by the responsible entity. The expense of such changes shall be paid by the other user of the Rights-of-Way for whose benefit the work is being done other than the City.

(E) Relocation or Removal of Facilities. Within 120 days, weather permitting, following written notice from the City, or immediately in an emergency, Grantee shall, to the

extent permitted by law, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any of Grantee's facilities within the right-of-way whenever the Mayor making a final determination that such removal, relocation, change or alterations is reasonably necessary for:

1. The construction, repair, maintenance or installation of any non-competitive City or other non-competitive public improvements in or upon the Rights-of-Way.

2. The vacation of a public street or the release of a utility easement.

In the event the City compensates any other Person (other than the City) for such work, then the Grantee shall be similarly compensated.

(F) Movement for Other Permittees. At the request of any Person holding a valid permit to move a building, house or structure and upon reasonable advance notice, Grantee shall temporarily raise, lower or remove its wires as necessary to permit the moving of a building, house or structure. The expense of such temporary changes must be paid by the permit holder, and Grantee may require a reasonable deposit of the estimated payment in advance.

10.4 Construction and Use of Poles. Whenever feasible, Grantee shall use existing poles when the installation of facilities aboveground is permitted. In the event Grantee cannot obtain the necessary poles and related facilities pursuant to a pole attachment agreement, and only in such event, then it shall be lawful for Grantee to make all needed excavations in the Streets for the purpose of placing, erecting, laying, maintaining, repairing and removing poles, conduits, supports for wires and conductors, and any other facility needed for the maintenance or extension of Grantee's Cable System. The City shall have the right to require Grantee to change the location of any of the Grantee's poles within Rights-of-Way when, in the opinion of the City, the public convenience requires such change, and the expense thereof shall be paid by Grantee. Notwithstanding the foregoing, the erection of new poles is only to be a last resort and in any event new poles may not be erected in any new subdivision.

10.5 Standards. In the maintenance and operation of its Cable System in Rights-of-Way, alleys and other public places, and in the course of any new construction or addition to its facilities, the Grantee shall proceed so as to not unreasonably interfere with the use of the Rights-of-Way.

10.6 Work of Contractors and Subcontractors. Grantee will take prompt corrective action if it finds that any facilities or equipment on the Cable System are not operating in compliance with the requirements of this Agreement or applicable law.

SECTION 11. SYSTEM DESIGN.

11.1 Cable System. The Grantee shall maintain and operate a modern, high quality Cable System with a minimum capacity of 860 MHz. The Cable System shall be two-way activated; support interactive cable services; and shall be designed for optimum reliability and flexibility; and Grantee shall regularly evaluate the need for new programming or incorporating new technologies.

11.2 Corrective Action. The Grantee will take prompt corrective action if it finds that any facilities or equipment in the Cable system are not operating in compliance with the requirements of this Agreement or applicable law.

SECTION 12. TECHNICAL STANDARDS

12.1 Technical Performance. The Grantee shall comply with the technical standards set forth in the rules and regulations of the FCC as such rules and regulations may from time to time be amended.

12.2 System Tests and Inspections; Special Testing.

(A) The Grantee shall perform all tests required under the rules and regulations of the FCC.

(B) The City shall have the right to inspect all construction or installation work performed pursuant to the provisions of the Franchise. In addition, the City may require special testing of a location or locations within the System if there is a particular matter of controversy or unresolved complaints regarding System construction, operations or installation work pertaining to such locations(s). Such tests shall be limited to the particular matter in controversy and the applicable standards. The City shall endeavor to so arrange its request for such special testing so as to minimize hardship or inconvenience to the Grantee or to the Subscribers of such testing.

(C) Before ordering such tests, the Grantee shall be afforded thirty (30) days following receipt of written notice to investigate and, if necessary, correct problems or complaints upon which tests were ordered. The City shall meet with the Grantee prior to requiring special tests to discuss the need for such and, if possible, visually inspect those locations which are the focus of concern. If, after such meetings and inspections, the City wishes to commence special tests and the thirty (30) days have elapsed without correction of the matter in controversy or resolution of complaints, the tests shall be conducted by a qualified engineer selected by the City and the Grantee, and Grantee shall cooperate in such testing. If Grantee fails to meet the applicable lawful standards as evidenced by the test results, such tests shall be paid for by Grantee.

(D) Unless otherwise provided in this Franchise, the test shall be supervised by the Grantee's chief technical authority, or an appropriate designee, who shall certify all records of tests provided to the City.

(E) Test results under this Section shall be filed with the City within fourteen (14) days of written request of the City.

(F) If any test indicates that any part or component of the System fails to meet applicable requirements, the Grantee, without requirement of additional notice or request from the City shall take corrective action, retest the locations and advise the City of the action taken and the results achieved by filing a written report certified by the Grantee's chief technical authority or its appropriate designee.

SECTION 13. SERVICE EXTENSION.

13.1 Service to Potential Subscribers

(A) The Grantee shall continue to provide service to all areas that it serves as of the Effective Date. Service will be provided at standard installation rates to homes in all areas meeting a density of 25 homes per mile as measured from the nearest useable point of the then existing Cable Television System. Neither the Grantee nor a competing cable provider shall be required to serve the downtown Lincoln area described as the area bounded on 7th Street to the West, K St to the South, 17th Street to the East and Q St to the North.

(B) Unserved areas with a density less than 25 (twenty-five) homes per mile, as measured from the nearest useable point of the then existing Cable Television system, will be provided service on a cost-sharing basis with the Grantee assuming the costs equal to 25 (twenty-five) homes per mile and the requesting customer(s) assuming the incremental costs.

(C) For the purposes of this Agreement, a standard installation is as a drop of 125 (one hundred and twenty five) feet or less. Drops in excess of 125 (one hundred and twenty five) feet will be provided on a cost-sharing basis with the customer assuming or bearing the incremental costs.

SECTION 14. STANDBY POWER EAS.

14.1 Standby Power. The Grantee shall maintain standby power at the headend, hubs and node locations.

14.2 Emergency Alert Capability.

(A) The Grantee shall comply with the EAS requirements imposed under federal law.

(B) The Grantee shall continue to provide the City with a separate over-ride system that can provide local alerts.

SECTION 15. AGREEMENT BREACHES; TERMINATION OF AGREEMENT.

15.1 Procedure for Revocation. The City shall undertake the following procedures for revocation:

(A) If the City believes that Grantee has breached any material provision of this Agreement and the City intends to pursue revocation of this Agreement, the City shall notify Grantee in writing, stating with reasonable specificity the nature of the alleged default. Grantee shall have thirty (30) days from the receipt of such notice to:

1. Respond to the City, contesting the City's assertion that a default has occurred, and requesting a hearing in accordance with subsection (B), below; or

2. Cure the default; or

3. Notify the City that Grantee cannot cure the default within the thirty (30) days, because of the nature of the default. In the event the default cannot be cured within thirty (30) days, Grantee shall promptly take all reasonable steps to cure the default and notify the City in writing and in detail as to the exact steps that will be taken and the projected completion date. In such case, the City may set a hearing in accordance with subsection (B) below to determine whether additional time beyond the thirty (30) days specified above is indeed needed, and whether Grantee's proposed completion schedule and steps are reasonable. Upon five (5) business days' prior written notice, either the City or Grantee may call an informal meeting to discuss the alleged default.

(B) If Grantee does not cure the alleged default within the cure period stated above, or by the projected completion date under subsection (A)(3), or denies the default and requests a hearing in accordance with subsection (A)(1), or the City orders a hearing in

accordance with subsection (A)(3), the City Council shall set a public hearing to investigate said issues or the existence of the alleged default. The City shall notify Grantee of the hearing in writing and such hearing shall take place no sooner than fourteen (14) days after Grantee's receipt of notice of the hearing. At the hearing, Grantee shall be provided an opportunity to be heard and to present evidence in its defense. The City Council's determination as to whether a default or a material breach of this Agreement has occurred shall be subject to judicial review in a court of competent jurisdiction.

(C) If, after the public hearing, the City Council determines that a default or material breach still exists, the City shall order Grantee to correct or remedy the default or breach within seven (7) business days or within such other longer timeframe as the City shall determine. In the event Grantee does not cure within such time to the City's reasonable satisfaction, the City may revoke this Agreement.

15.2 Alternative Remedies. No provision of this Agreement shall be deemed to bar the right of the City to seek or obtain judicial relief from a violation of any provision of the Agreement or any rule, regulation, requirement or directive promulgated thereunder. Neither the existence of other remedies identified in this Agreement nor the exercise thereof shall be deemed to bar or otherwise limit the right of the City to recover monetary damages for such violations by Grantee, or to seek and obtain judicial enforcement of Grantee's obligations by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity.

15.3 Revocation.

(A) In addition to revocation in accordance with other provisions of this Agreement, the City may revoke this Agreement and rescind all rights and privileges associated with this Agreement in the following circumstances, each of which represents a material breach of this Agreement:

1. If Grantee, after written notice and a reasonable opportunity to cure, continues to fail to perform or attempts to evade any material obligation under this Agreement or under any other agreement, ordinance or document between the City and Grantee;

2. If Grantee abandons the Cable System, or terminates the Cable System's operations;

3. If Grantee fails to restore service to the Cable System or institutional networks after three consecutive days of an outage or interruption in service; except when approval of such outage or interruption is obtained from the City, it being the intent that there shall be continuous operation of the Cable System;

4. If the Grantee becomes insolvent, unable or unwilling to pay its debts, or is adjudged bankrupt, or there is an assignment for the benefit of Grantee's creditors, or all or part of the Grantee's Cable System is sold under an instrument to secure a debt and is not redeemed by Grantee within thirty (30) days from said sale; or

5. This Agreement may be revoked one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of the Grantee (at the option of the City and subject to applicable law) whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless elsewhere provided herein.

(B) The City shall provide Grantee written notice of its intent to consider revocation under this subsection and hold a hearing and provide Grantee due process and the opportunity to cure in accordance with the provisions of Section 15.1 of this Agreement.

15.4 Reservation of Rights. Unless otherwise set forth in this Agreement, each party expressly reserves any right it may now have or be hereafter granted under federal or state law. The rights of the City under this Agreement shall not be read to limit any immunities the City may enjoy under Federal, or State or local law.

SECTION 16. ABANDONMENT

16.1 Effect of Abandonment. If the Grantee abandons its Cable System during the term of this Agreement or fails to provide continuous service, the City, at its option, may operate the Cable System; designate another entity to operate the Cable System temporarily until the Grantee restores service under conditions acceptable to the City, or until the Agreement is revoked and a new franchisee is selected by the City; or obtain an injunction requiring the Grantee to continue operations. If the City is required to operate or designate another entity to operate the Cable System, the Grantee shall reimburse the City or its designee for all reasonable costs, expenses and damages incurred.

16.2 What Constitutes Abandonment. The Grantee shall be deemed to have abandoned the System and the City shall be entitled to exercise its options if: the Grantee willfully or without cause fails to provide Cable Service to a substantial portion of the Franchise Area for forty-eight (48) consecutive hours, unless the City authorizes a longer interruption of service.

SECTION 17. TRANSFER

17.1 A transfer of the franchise to any Person controlling, controlled by or under the same common control as the Grantee shall not require prior City approval. The Transferee shall represent to the City that it has the legal, technical and financial qualifications to fulfill the Franchise. A breach of that representation shall be a material breach of the Franchise.

17.2 A Transfer pursuant to this Section shall not be deemed to waive any rights of the City to subsequently enforce noncompliance issues relating to the franchise.

17.3 In no event shall a transfer of this Franchise be effective without the transferee becoming a signatory to this Agreement and assuming all of the rights and obligations hereunder.

SECTION 18. MISCELLANEOUS PROVISIONS

18.1 Notices. Throughout the term of the Agreement, each party shall maintain and file with the other a local address for the service of notices by mail. All notices shall be sent to such respective address, and such notices shall be effective upon the date of mailing. At the effective date of this Agreement:

Grantee's address shall be: Time Warner Cable
Lincoln Division
5400 S. 16th Street
Lincoln, Nebraska 68512
Attention: Division President

With a copy to: Time Warner Cable
Corporate Office
290 Harbor Drive
Stamford, CT 06902
Attention: General Counsel

The City's address shall be:

CITY OF LINCOLN, NEBRASKA
555 South 10th Street
Lincoln, Nebraska 68508
Attention: Steve Huggenberger,
Assistant City Attorney

18.2 Costs to be Borne by Grantee. Grantee shall pay for all costs of publication of this Agreement.

18.3 Binding Effect. This Agreement shall be binding upon the parties hereto, their permitted successors and assigns.

18.4 Authority to Amend. This Agreement may be amended at any time by written agreement between the parties.

18.5 Rights of Third Parties. This Franchise is not intended to, and shall not be construed to, grant any rights to or vest any rights in third parties, unless expressly provided herein.

18.6 Governing Law. This Agreement shall be governed in all respects by the laws of the State of Nebraska.

18.7 Captions. The captions and headings of this Agreement are for convenience and reference purposes only and shall not affect in any way the meaning or interpretation of any provisions of this Agreement.

18.8 No Joint Venture. Nothing herein shall be deemed to create a joint venture or principal agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third persons or the public in any manner which would indicate any such relationship with the other.

18.9 Waiver. Except as expressly provided herein, the failure of the City at any time to require performance by the Grantee of any provision hereof shall in no way affect the right of the City hereafter to enforce the same. Nor shall the waiver by the City of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision, or as a waiver of the provision itself or any other provision.

18.10 Compliance with Federal, State and Local Laws.

(A) This agreement shall at all times be subject to applicable local, state and federal law, except as specifically provided otherwise.

(B) If any federal or State law or regulation shall require or permit City or Grantee to perform any service or act or shall prohibit City or Grantee from performing any service or act which may be in conflict with the terms of this Franchise, either party shall notify the other of the point in conflict believed to exist between such law or regulation. Grantee and

City shall conform to State laws and regulations regarding cable communications as they become effective, unless otherwise stated, and to conform to federal laws and regulations as they become effective.

(C) In the event that federal or state laws or regulations preempt a provision or limit the enforceability of a provision of this Franchise, the provision shall be read to be preempted to the extent and for the time, but only to the extent and for the time, required or necessitated by law. In the event such federal or state law or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the City.

(D) If any term, condition or provision of this Franchise or the application thereof to any Person or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition or provision to Persons or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Franchise and all terms, provisions and conditions hereof shall, in all other respects, continue to be effective. In the event such law or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision which had been held invalid or modified is no longer in conflict with the law and regulations then in effect, said provision shall thereupon return to full force and effect and shall thereafter be binding on Grantee and City without further action by the City.

18.11 Grantee Acknowledgment of Validity of Franchise. The Grantee acknowledges that it has had an opportunity to review the terms and conditions of this Franchise and that under current law Grantee believes that said terms and conditions are not unreasonable or arbitrary, and that Grantee believes City has the power and legal authority to make the terms and conditions contained in this Franchise.

18.12 Entire Agreement.

(A) This Agreement and all Exhibits represent the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersede all prior oral negotiations between the parties, including any prior franchises, cable ordinances or proposals.

(B) For purposes of this agreement and section 5.15.080 of the Cable Communications Ordinance, the parties acknowledge that there are no franchise application or requests for proposals.

18.13 Cumulative Rights. All rights and remedies given to the City by this Franchise or retained by the City herein shall be in addition to and cumulative with any and all other rights and remedies, existing or implied, now or hereafter available to City, at law or in equity, and such rights and remedies shall not be exclusive, but each and every right and remedy specifically given by this Franchise or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by City and the exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy.

18.14 Force Majeure. The Grantee shall not be deemed in default of provisions of this Franchise or the City Code (and the Grantee shall not be subject to any sanction, or enforcement measure of any kind whatsoever) where performance was rendered impossible by war or riots, labor strikes or civil disturbances, extreme weather, floods, or other causes beyond the Grantee's

control, and the Franchise shall not be revoked or the Grantee penalized for such noncompliance, provided that the Grantee, when possible, takes immediate and diligent steps to bring itself back into compliance and to comply as soon as possible, under the circumstances, with the Franchise without unduly endangering the health, safety and integrity of the Grantee's employees or property, or the health, safety and integrity of the public, the Rights-of-way, public property or private property.

18.15 Non-Waiver. Unless otherwise set forth in this Agreement, neither party waives any right, immunity, limitation or protection otherwise available to such party, its officers, employees or agents under federal or state law.

18.16 Costs. Any cost to be borne by the Grantee may, at the discretion of the Grantee, be passed through to the Grantee's customers unless otherwise prohibited by applicable law.

18.17 Miscellaneous Fees. Grantee shall not be required to and shall be relieved of any requirement to remit any franchise renewal application fee to the City or to reimburse the City for any franchise renewal consultant services.

IN WITNESS WHEREOF, this Agreement is signed in the name of the City of Lincoln, Nebraska, a municipal corporation, this date Nov. 30, 2005.

ATTEST:

Joan E Ross
City Clerk

CITY OF LINCOLN, NEBRASKA,
a municipal corporation,

Coleen J. Seng
Coleen J. Seng, Mayor of Lincoln

TIME WARNER ENTERTAINMENT-
ADVANCE NEWHOUSE PARTNERSHIP,

Elizabeth A. Scarborough Jr.
Title: President - Nebraska Division

ORDINANCE NO. 18652

AN ORDINANCE Granting Time Warner Entertainment Advance/Newhouse Partnership a communication system franchise for cable television within the City of Lincoln pursuant to and subject to the provisions of the Lincoln Municipal Code.

Read First Time	November 7, 2005
Read Second Time	NOV 14 2005
Read Third Time	NOV 28 2005
Passed	NOV 28 2005
Published in	Journal Star
on	12/9/05

CERTIFICATE

State of Nebraska)
SS
County of Lancaster)

I, the undersigned, City Clerk of the City of Lincoln, Nebraska, do hereby certify that the within ordinance is the original Ordinance No. 18652 **as passed by the City Council of said City, as indicated above, and as approved by the Mayor of said City and as the same appears of record in my office and is now in my charge remaining as City Clerk aforesaid.**

IN WITNESS WHEREOF, I have herunto set my hand officially and affixed the seal of the City of Lincoln, Nebraska this 30th **day of** November, 2005

Joan E Ross
City Clerk of Lincoln, Nebraska

CITY OF LINCOLN · FOUNDED JULY 29, 1867 · INCORPORATED APRIL 7, 1869 · SEAL · LANCASTER COUNTY, NEBRASKA

Shrewsbury, Ann

From: Bajo Jecmenica [razlogzanadu@yahoo.com]
Sent: Friday, November 11, 2005 12:54 PM
To: Shrewsbury, Ann
Subject: Re: Comments for City Council

1) I thought that the staff was a great help, they introduced us to all the technique and funtions of the cameras and computers. They also helped with all the other things we had questions with.
2)No, there was no discrimination at all, everyone was treated fairly.
3)Everything was just perfect, we appreciated them assisting us in time, and having everything perfectly set.
4)It is a great priveleged and i am extrememly thankful for time warner providing this oppurtunity to have this program aired.

"Shrewsbury, Ann" <ann.shrewsbury@twcable.com> wrote:

> Thanks so much for visiting with me today and for considering commenting to the City Council on your experiences with Time Warner Cable. As I explained on the phone, the City Council will be meeting Monday, Nov. 14, for a public hearing about our cable franchise. In an effort to demonstrate our effective management of the access channels, it would be great if you could email some of our comments about your experiences.
>
> Things you may want to comment on include:
>
> 1. The Time Warner Cable staff and their help producing shows.
> 2. The fairness of the company (i.e. have you ever felt discriminated against, treated unfairly).
> 3. The management of the channel in regards to scheduling, studio use, and editing time.
> 4. The privilege of having a community access channel, provided by Time Warner Cable.
>
> Again, thank you so much for taking the time to send in a few comments. I will read a some excerpts from everyone's comments at the public hearing on Monday and submit your complete comments to the City Council record. If you have any questions, please don't hesitate to contact me at the numbers below.
>
> Also, for more information about the franchise and Monday's meeting, you can read the Journal Star article from today's paper at the link below.
>
> http://www.journalstar.com/articles/2005/11/10/local/doc43729c40bdaf0846911400.txt
>
> Sincerely,
>
> Ann Shrewsbury
> *Manager of Public Affairs and Community Programming*
> 5400 S. 16th St., Lincoln, NE 68512
> ph: 402.421.0378
> cell: 402.416.6890
> www.timewarnercable.com

Shrewsbury, Ann

From: Eric L Huggins [elynnhuggins@juno.com]
Sent: Friday, November 11, 2005 8:52 AM
To: Shrewsbury, Ann
Subject: Re: Comments for City Council

City Council Members,
We have been a program producer for community access here in Lincoln since 1990. We have come in contact with a number of people through this medium, and we are grateful to the city and to Time Warner for providing the Lincoln Community Cable Channel. Community access gives citizens a unique outlet -- one not offered by every community. We appreciate this special opportunity Time Warner provides. We also appreciate the help they offer -- they have been cooperative and have provided us with what we need to get our programs aired.
E. Lynn Huggins
Bible Talk
Eastside church of Christ

On Thu, 10 Nov 2005 15:00:31 -0500 "Shrewsbury, Ann" <ann.shrewsbury@twcable.com> writes:

> Thanks so much for visiting with me today and for considering commenting to the City Council on your experiences with Time Warner Cable. As I explained on the phone, the City Council will be meeting Monday, Nov. 14, for a public hearing about our cable franchise. In an effort to demonstrate our effective management of the access channels, it would be great if you could email some of our comments about your experiences.
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>
> Sincerely,
>
> Ann Shrewsbury
> *Manager of Public Affairs and Community Programming*
> 5400 S. 16th St., Lincoln, NE 68512
> ph: 402.421.0378

Community Access Support letter wps

?RON HALVORSON PRODUCTIONS

Dear Lincoln City Council,

My name is Ron Halvorson and I am writing in support of Time Warner Cable's Community Access Programming Department. I am a local community producer and this department has been instrumental in helping me to get "The Metro Show with Ron Halvorson" off the ground and on the air. I have been producing and airing "The Metro Show with Ron Halvorson since July 2000 on Channel 13 and "The Funhouse" on Channel 80/99 since early 2003. Prior to that time I was involved with or employed by Cable/Public Access Programming Departments in Bellevue, Grand Island and North Platte and have produced cable access shows since 1991.

The Community Access Programming Department has trained and supported my staff and myself as we strive to produce quality cable access family programming. The support and guidance of the management, supervisors and production assistants, as well as the physical outlet of Time Warner Cable Community Access Department's production equipment and studio is vital to local producer's, such as myself, ability to tape, edit, produce and air community programming to the city of Lincoln.

We look forward to working with Time Warner Cable's Community Access Programming department on current and future projects as they improve and expand their resources. These improved resources will bring additional quality programming to the air.

Thank you for your time and consideration of this letter of support. Please feel free to contact me at (402) 525-2084 or metroconnect@yahoo.com or through my website at www.geocities.com/metroconnect if you have any additional questions.

Sincerely,
?
Ron Halvorson

Ron Halvorson Productions, P.O. Box 85744, Lincoln, Nebraska 68501,
metroconnect@yahoo.com, www.geocities.com/metroconnect, (402) 525-2084

Shrewsbury, Ann

From: Debbie DeFrain [debbiedefrain@neb.rr.com]
Sent: Thursday, November 10, 2005 2:37 PM
To: Shrewsbury, Ann
Subject: RE: Comments for City Council

My experience with Time Warner Cable community access channel has been mostly through First Presbyterian Church. Although all of the employees have always been courteous and professional, I must point out that Eric D'Agostino is exceptional in his people skills and patience. Eric has even called us to let us know of possible problems with our programming.

Eric and TWC have been very helpful in answering our technical questions on production. The same experience has been true for questions on scheduling. Occasional glitches have been addressed in an upfront manner.

At all times, we have felt that programming and scheduling are provided in a fair and open forum, with true community input as a result.

We feel very fortunate to have this media available for our community, and we hope it continues.

Sincerely,
Debbie DeFrain,
First Presbyterian Church TV/Radio Committee member

From: Shrewsbury, Ann [mailto:ann.shrewsbury@twcable.com]
Sent: Thursday, November 10, 2005 2:14 PM
To: debbiedefrain@neb.rr.com
Cc: jdefrain@neb.rr.com
Subject: Comments for City Council

Thanks so much for visiting with me today and for considering commenting to the City Council on your experiences with Time Warner Cable. As I explained on the phone, the City Council will be meeting Monday, Nov. 14, for a public hearing about our cable franchise. In an effort to demonstrate our effective management of the access channels, it would be great if you could email some of our comments about your experiences.

Things you may want to comment on include:

1. The Time Warner Cable staff and their help producing shows.
2. The fairness of the company (i.e. have you ever felt discriminated against, treated unfairly).
3. The management of the channel in regards to scheduling, studio use, and editing time.
4. The privilege of having a community access channel, provided by Time Warner Cable.

Again, thank you so much for taking the time to send in a few comments. I will read a some excerpts from everyone's comments at the public hearing on Monday and submit your complete comments to the City Council record. If you have any questions, please don't hesitate to contact me at the numbers below.

Also, for more information about the franchise and Monday's meeting, you can read the Journal Star article from today's paper at the link below.

http://www.journalstar.com/articles/2005/11/10/local/doc43729c40bdaf0846911400.txt

Sincerely,

Ann

Shrewsbury, Ann

From: Jenny Stager [jstager@capitalhumanesociety.org]

Sent: Thursday, November 10, 2005 2:47 PM

To: Shrewsbury, Ann

Subject: Re: Comments for City Council

1.When ever I have had a problem with the equipment, someone has always been there to help.
2.Everyone seems to be very friendly and never made me feel unwelcome.
3.When ever I need to reschedule a time to edit the people are very flexible in accommodating that.
4.It really helps to have critter corner. We get many calls saying I say this animal on Critter Corner and would like more information. Some people may not have even been looking for a animal but they see one on the show and that animal would work out great for them.

Jenny Stager
Director of Education/Volunteers
Capital Humane Society
2320 Park Blvd.
Lincoln, NE 69502
441-4483

Shrewsbury, Ann

From: Vleerankin@aol.com
Sent: Thursday, November 10, 2005 2:46 PM
To: Shrewsbury, Ann
Subject: letter to the city council

Here you go, Ann. Hope this helps! Let me know if I've covered this issue well enough. Thanks, Vicki

To: Lincoln City Council Members

From: Vicki Rankin

RE: Time Warner Cable

As the host/creator of *Picturing Life in Lincoln*, Time Warner Cable's 30-minute program showcasing Lincoln's fine and performing arts on Channel 13, I am writing to express my support for Time Warner Cable's proposed cable franchise agreement. The proposed 41 cent increased monthly fee for public access improvements will contribute to the quality of shows, such as *Picturing Life in Lincoln*. Time Warner will spend at least $600,000 over the next 15 years on necessary studio improvements and equipment for public access channels 13 and 80. Ultimately, this benefits Lincoln, as *Picturing Life in Lincoln* raises awareness within the community of Lincoln's many worthwhile arts organizations and arts endeavors. The cable service will continue to offer five public educational and government access channels. However, if Time Warner goes digital, the city could get up to 25 public, educational and government channels. This would be a tremendous benefit to Lincoln. Public, educational and government access channels offer an important variety of programming that contributes to the education and edification of our community.

I would encourage you to favorably consider this proposed cable franchise agreement on Monday, November 14, 2005 at the public hearing. Thank you.

Vicki Rankin, Host/Creator
Picturing Life in Lincoln

From: Debbie DeFrain [mailto:debbiedefrain@neb.rr.com]
Sent: Thursday, November 10, 2005 2:37 PM
To: Shrewsbury, Ann
Subject: RE: Comments for City Council

My experience with Time Warner Cable community access channel has been mostly through First Presbyterian Church. Although all of the employees have always been courteous and professional, I must point out that Eric D'Agostino is exceptional in his people skills and patience. Eric has even called us to let us know of possible problems with our programming.

Eric and TWC have been very helpful in answering our technical questions on production. The same experience has been true for questions on scheduling. Occasional glitches have been addressed in an upfront manner.

At all times, we have felt that programming and scheduling are provided in a fair and open forum, with true community input as a result.

We feel very fortunate to have this media available for our community, and we hope it continues.

Sincerely,
Debbie DeFrain,
First Presbyterian Church TV/Radio Committee member

From: Shrewsbury, Ann [mailto:ann.shrewsbury@twcable.com]
Sent: Thursday, November 10, 2005 2:14 PM
To: debbiedefrain@neb.rr.com
Cc: jdefrain@neb.rr.com
Subject: Comments for City Council

Thanks so much for visiting with me today and for considering commenting to the City Council on your experiences with Time Warner Cable. As I explained on the phone, the City Council will be meeting Monday, Nov. 14, for a public hearing about our cable franchise. In an effort to demonstrate our effective management of the access channels, it would be great if you could email some of our comments about your experiences.

Things you may want to comment on include:

1. The Time Warner Cable staff and their help producing shows.
2. The fairness of the company (i.e. have you ever felt discriminated against, treated unfairly).
3. The management of the channel in regards to scheduling, studio use, and editing time.
4. The privilege of having a community access channel, provided by Time Warner Cable.

Again, thank you so much for taking the time to send in a few comments. I will read a some excerpts from everyone's comments at the public hearing on Monday and submit your complete comments to the City Council record. If you have any questions, please don't hesitate to contact me at the numbers below.

Also, for more information about the franchise and Monday's meeting, you can read the Journal Star article from today's paper at the link below.

http://www.journalstar.com/articles/2005/11/10/local/doc43729c40bdaf0846911400.txt

Sincerely,

Ann

Shrewsbury, Ann

From: Greg Keller [gkeller@lps.org]
Sent: Friday, November 11, 2005 12:22 AM
To: Shrewsbury, Ann
Subject: Re: Comments for City Council

Ann,

Not sure how much help I will be. I produce all of my shows using iMovie and my own computer. I don't use the studio or equipment at all. I burn my show onto a DVD and drop it off at the door. The staff has always been good about getting my program on, although there have been a couple of glitches where the show didn't begin/end on time and when the wrong show was aired, but for the most part, it's been fine. I was given a good orientation and I was told that someone would be available to help with equipment, etc., but as I said, I've never actually used your equipment. It's a great service to have the facility available. I think more people would take advantage of it if they knew more about the procedure.

I certainly appreciate having the ability to air my show. Recently I did a 5-part series featuring several panel discussions on Nebraska's prison system. It was nice to be able to make the presentations available to people who couldn't attend the actual events.

Hope that helps.

~Greg

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