

ORDINANCE NO. _____

AN ORDINANCE GRANTING A RENEWED FRANCHISE TO PAUL BUNYAN RURAL TELEPHONE COOPERATIVE IN THE CITY OF GRAND RAPIDS; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE RENEWED FRANCHISE; PROVIDING FOR CERTAIN SERVICE REGULATIONS; AND PRESCRIBING PENALTIES FOR THE VIOLATION OF THE PROVISIONS HEREIN

The City of Grand Rapids ordains:

Section I.
Statement of Intent and Purpose

By the adoption of this renewed Franchise, the City hereby grants a franchise ordinance. The provision of competitive cable service can contribute significantly to the communication needs and desires of residents of the City. Further, the City may achieve better utilization and improvement of public services with the development.

Section II.
Definition of Terms

1. **Terms.** For purposes of this Franchise, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words in the singular number include the plural number. The word “shall” is always mandatory and not merely directory. The word “may” is directory and discretionary and not mandatory.
 - a. “**Affiliate**” means an entity which owns or controls, is owned or controlled by, or is under common ownership with Grantee.
 - b. “**Applicable Laws**” means a) any local law or City Code applied in a uniform and nondiscriminatory manner; b) federal or state statute, law or regulation including Minn. Stat. § 238 et. seq. as may be amended, and c) any other final legal authority governing any of the matters addressed in this Franchise.
 - c. “**Cable Service**” means: the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and (iii) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
 - d. “**Channel**” means a single full motion video channel.
 - e. “**City**” means the City of Grand Rapids, Minnesota.
 - f. “**Competition**” means the existence of two (2) or more entities authorized

to provide Cable Service to substantially the same potential customers in the City pursuant to franchises.

- g. “Drop” means the cable that connects the ground block on the Subscriber's residence or institution to the nearest distribution tap of the System.
- h. “FCC” means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.
- i. “Franchise” means this ordinance and the contractual relationship established hereby.
- j. “Franchise Fee” means the fee or assessment imposed by the City on a Grantee solely because of its status as a franchisee. The term “Franchise Fee” does not include: (i) any tax, fee or assessment of general applicability; (ii) capital costs which are required by this Franchise related to the provision of public, educational, or governmental access facilities; (iii) requirements or charges incidental to awarding or enforcing this Franchise, including payments for bonds, security funds or letters of credit, insurance, indemnification, penalties or liquidated damages; or (iv) any fee imposed under Title 17 of the United States Code.
- k. “Grantee” is Paul Bunyan Rural Telephone Cooperative, its lawful successors, transferees or assignees.
- l. “Gross Revenues” means all revenues received by the Grantee or its Affiliates from operation of the System to provide Cable Service to Subscribers in the City. Gross Revenues do not include the following: 1) revenues or other receipts derived from the provision or transport of non-Cable Services; 2) any taxes, fees, charges or Universal Service contributions on Cable Services imposed directly or indirectly on any Subscriber by any governmental unit or agency; 3) the PEG Fee; 4) launch fees; 5) bad debt written off by Grantee in the normal course of its business, provided, however, that bad debt recoveries shall be included in Gross Revenue upon collection; or 6) Subscriber deposits. Gross Revenues shall be calculated in accordance with generally accepted accounting principles (“GAAP”).

The parties acknowledge that the Grantee may offer a bundle or package of Cable Services and non-Cable Services at a discounted rate. In order to calculate Gross Revenues, the Grantee will allocate revenues generated from a bundle or package of services between Cable Services (which are subject to the Franchise Fee) and non-Cable Services (which are not subject to the Franchise Fee but may be subject to other fees and/or taxes) on a proportionate, pro rata basis based on the Grantee’s generally available rate (rate card) for each service individually or, if such methodology conflicts

with GAAP, bundled revenues shall be allocated in accordance with GAAP. In no event shall the Grantee allocate the revenues to evade its Franchise Fee obligations under this Franchise or disproportionately reduce Gross Revenues.

- m. “Normal Business Hours” means those hours during which most similar businesses in the community are open to serve customers. Normal Business Hours must include some evening hours at least one night per week and/or some weekend hours.
- n. “Open Video System” or “System” means a facility consisting of a set of transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service, including video programming and which is provided to multiple subscribers within a community, provided that the FCC has certified that such System complies with subpart S of Part 76 of its rules (47 CFR §§ 76.1500-76.1514).
- o. “PEG Access” means public, educational, governmental channels, equipment, facilities, funding, or operations as the context may require.
- p. “Person” is any person, firm, partnership, association, corporation, company, or other legal entity.
- q. “Right-of-Way” or “Rights-of-Way” means the area on, below, or above any real property in the City in which the City has an interest including, but not limited to any street, road, highway, alley, sidewalk, parkway, park, skyway, or any other place, area, or real property owned by or under the control of the City, including other dedicated Rights-of-Way for travel purposes and utility easements.
- r. “Right-of-Way Ordinance” means those provisions of the City Code establishing permitting requirements for work in or use of Rights-of-Way, and any amendments thereto.
- s. “Service Area” or “Franchise Area” means the entire geographic area within the City as it is now constituted or may in the future be constituted.
- t. “Standard Installation” means any installation which is located up to one hundred twenty-five (125) feet from the existing distribution system.
- u. “Subscriber” means any Person who lawfully receives Cable Service from Grantee.

Section III.
Grant of Franchise

1. Findings of Council. In the review of the request for Franchise renewal by the Grantee and negotiations related thereto, the Grantee's technical, financial, legal qualifications and ability were considered and approved in accordance with state and federal law. In addition, the Grantee's plans for continuing to provide Cable Service were considered and found adequate and feasible. The Franchise granted herein is intended to comply in all respects with Minnesota Statutes Chapter 238, and all applicable federal laws and regulations.
2. Grant of Franchise. This Franchise is nonexclusive and is granted pursuant to the terms and conditions contained herein. The Grantee shall have the continued right and privilege pursuant to this Franchise to provide Cable Service and construct, reconstruct, operate and maintain a System in the Rights-of-Way in the City. Use of the Rights-of-Way to operate a System and provide Cable Service is subject to Applicable Law, including the terms and conditions of the Right-of-Way Ordinance.
3. Lease or Assignment Prohibited. Grantee shall not assign or lease its entire System channel capacity to an unaffiliated person without obtaining the prior written approval of the City. However, Grantee may carry and distribute the video programming of unaffiliated providers pursuant to its legal and regulatory obligations without providing advance notice to the City and without obtaining any approvals from the City.
4. Franchise Term. This Franchise shall take effect upon the Effective Date and shall remain in effect for a period of fifteen (15) years until _____, 203_.
5. Compliance with Applicable Laws, Resolutions and Ordinances. The Franchise shall, at all times, be subject to Applicable Law. Subject to Applicable Law, the Grantee shall at all times during the term of this Franchise be subject to all lawful exercise of the police power and eminent domain rights of the City.
6. Franchise Area/Service Area.
 - a. This Franchise is granted for the Service Area. Grantee shall be required to extend Service to any requesting Person or area in the Service Area in the event there is a minimum of twenty-five (25) dwelling units per linear mile of cable as measured from Grantee's closest activated tap measured along existing rights-of-way.
 - b. No potential Subscriber shall be refused Cable Service arbitrarily. If an area does not meet the density requirements of Section 3.6.a., the Grantee shall extend the Cable System to Subscribers in that area on mutually acceptable terms and conditions. The Grantee may require that payment of the capital contribution in aid of construction borne by such potential Subscribers or developer be paid in advance. Subscribers and/or the developer shall also

be responsible for any Standard/non-standard Installation charges to extend the Cable System from the tap to the residence or structure.

- c. Cable Service shall not be denied to any group of potential residential Subscribers because of the income of the residents of the area in which such group resides.

- 7. Written Notice. All notices, reports, or demands required to be given in writing under this Franchise shall be deemed to be given when delivered personally to any officer of Grantee or City's Administrator of this Franchise or ninety-six (96) hours after it is deposited in the United States mail in a sealed envelope, with registered or certified mail postage prepaid thereon, addressed to the party to whom notice is being given, as follows:

If to Grantor: City of Grand Rapids
Attn: City Administrator
420 N. Pokegama Ave.
Grand Rapids, MN 55744-2662

If to Grantee: Paul Bunyan Telephone
Attn: Video Services Coordinator
1831 Anne St. NW, Suite 100
Bemidji, MN 56601

With copy to: Paul Bunyan Telephone
Attn: General Manager
1831 Anne St. NW, Suite 100

Bemidji, MN 56601

Such addresses may be changed by either party upon notice to the other party given as provided in this Section.

Section IV. **Construction Standards**

- 1. Right of Way Ordinance. Grantee's System will be constructed in accordance with Applicable Law, including the terms and conditions of the Right-of-Way Ordinance, and will be operated in compliance with such requirements. The terms of Applicable Law including the Right-of-Way Ordinance will supersede any directly conflicting or inconsistent terms and conditions herein.

Section V.
System Design

1. System Design and Channel Capacity.
 - a. The Grantee will provide and maintain for the term of this Franchise a System providing a minimum of 750 MHz capacity with the capability of making available a minimum of 250 channels. In addition, the Grantee agrees to periodically meet with the City Council at the City's request, no more than once each three (3) years, to discuss the current state of Cable Service technology, the System's performance and capabilities, and any plans Grantee may have for improving the System in order to maintain modern facilities.
 - b. All Cable Service programming decisions will be made by Grantee, subject to its responsibilities under federal law. The initial broad categories of Cable Service are identified in Exhibit A attached hereto and incorporated herein by reference. The Grantee shall comply with federal law, including all applicable FCC rules, regarding notifying the City and Subscribers prior to any channel deletions.
2. System Extension and Annexed Areas. Subject to the line extension criteria in Section 3.6.a., the Grantee shall extend the Cable System into an area annexed by the City; provided however, Grantee may, but shall not be obligated to extend the Open Video System into any part of an annexed area that is already served by a Cable Service provider.
3. Emergency Override/EAS Requirements. The Grantee will implement emergency alert override capability consistent with Applicable Law. The Grantee shall make its emergency alert system available to the City in the event of a local emergency; provided, however, that any such use by the City is in accordance with the applicable state and local plans as approved in accordance with FCC regulations.

Section VI.
Customer Service

1. Enforcement of Customer Service and Technical Standards. In the event there is Competition in the City the City shall stay enforcement of this Section VI, provided, however, the City may initiate enforcement of any or all provisions in this Section if one or more entities holding franchises to provide Cable Service cease actually offering such Service and only the Grantee continues to actually provide Cable Service to Subscribers in the City. The City may initiate enforcement of this Section due to the presence of the circumstances set forth in this Section VI(1) by Resolution of the City Council. The Resolution shall indicate the basis for the City's determination that it may begin to enforce this Section. A copy of such Resolution shall be mailed to Grantee. The City shall ensure that Grantee is

provided thirty (30) days' notice, either from a Subscriber or City, to address complaints prior to City taking any enforcement action.

2. Technical Standards. The technical standards used in the operation of the System shall comply, at minimum, with the technical standards promulgated by the FCC relating to Open Video Systems pursuant to Title 47, Section 76, Subpart K of the Code of Federal Regulations, as may be amended or modified from time to time, which are incorporated herein by reference.
3. FCC Reports. Upon request, the results of any tests required to be filed by Grantee with the FCC shall be filed with City or its designee within ten (10) days of the conduct of such tests.
4. Regulation of Service Rates.
 - a. The City may regulate Subscriber rates for the provision of Cable Service over a System to the extent consistent with and allowed under Applicable Law.
 - b. A list of Grantee's current residential Subscriber rates and charges shall be maintained on file with the City and shall be available for public inspection. Grantee shall give the City and Subscribers written notice of any change in a rate or charge in accordance with any applicable FCC requirements, unless such change arises from changes in regulatory fees, franchise fees, access costs or franchise imposed costs.
5. Sales Procedures. Grantee shall comply with Applicable Law when marketing Cable Services within City. Grantee shall have the right to market consistent with local ordinances and other Applicable Laws and regulations.
6. Telephone Inquiries and Complaints.
 - a. Availability. Grantee will maintain local, toll-free or collect call telephone access lines which will be available to its Subscribers 24 hours a day, seven days a week. During Normal Business Hours, trained representatives of Grantee shall be available to respond to Subscriber inquiries. Grantee will ensure that: (1) an adequate number of trained company representatives will be available to respond to customer telephone inquiries during Normal Business Hours; and (2) after Normal Business Hours, the access line will be answered by a trained company representative or a service or an automated response system such as an answering machine. Inquiries received after Normal Business Hours must be responded to by a trained company representative on the next business day.
 - b. Telephone Answer Time and Busy Signals. Under Normal Operating Conditions, telephone answer time by a customer representative, including wait time, shall not exceed a reasonable wait time. Under Normal Operating Conditions, the customer will receive a busy signal less than three (3) percent of the time.

7. Installation, Outage and Service Calls. Under Normal Operating Conditions which will exclude the initial deployment period, each of the following standards will be met no less than ninety five (95) percent of the time measured on a quarterly basis: (1) Excluding conditions beyond the control of Grantee which prevent performance, Grantee will begin working on service interruptions promptly, and in no event later than twenty-four (24) hours after the interruption becomes known, and Grantee must begin actions to correct other service problems the next business day after notification of the service problem and resolve such problems as soon as is reasonably possible; (2) The “appointment window” alternatives for Installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-hour time block during Normal Business Hours. The Grantee may schedule service calls and other installation activities outside of Normal Business Hours for the convenience of the customer; (3) Grantee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment; (4) If a representative of Grantee is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time during Normal Business Hours which is convenient for the customer.
8. Complaint and Other Service Records. Subject to Grantee’s obligation to maintain the privacy of certain information, Grantee shall prepare and maintain written records of all complaints received and the resolution of such complaints, including the date of such resolution. Such written records shall be on file at the office of Grantee. Upon request, Grantee shall provide the City with a written summary of such complaints and their resolution on a quarterly basis and in a form mutually agreeable to City and Grantee. Grantee may be required to provide detailed compliance reports on a quarterly basis with respect to the objectively measurable service standards herein upon written demand by the City.
9. Subscriber Contracts. Grantee shall provide to City upon request any standard form Subscriber contract utilized by Grantee. If no such written contract exists, Grantee shall provide a document completely and concisely stating the length and terms of the Subscriber contract offered to customers.
10. Billing and Subscriber Communications. Bills must be clear, concise, and understandable, with itemization including but not limited to, basic and premium charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates, and credits. In case of a billing dispute, the cable operator must respond to a written complaint from a subscriber within thirty (30) days.
11. Refunds and Credits. Grantee’s refund policies shall comply with Applicable Law. Refund checks will be issued promptly, but no later than 30 days after the return of the equipment supplied by the Grantee if Service is terminated. Upon request, Grantee shall issue refunds or credits for outages lasting in excess of twenty four (24) continuous hours provided that Grantee shall not be obligated to provide

refunds or credits for interruptions caused by the negligence or willful act of the Subscriber, interruptions caused by Subscriber-provided facilities or equipment, interruptions caused by electric power failure, force majeure events or interruptions in programming caused by content providers. No other liability shall attach to the Grantee in consideration of such interruption to Service.

12. Late Fees. Fees for the late payment of bills shall not accrue until the normal billing cut-off for the next month's service approximately one (1) month after the unpaid bill in question was sent to the Subscriber.
13. Local Office. Grantee shall maintain a local office in the City that is staffed during normal business hours provided that, upon thirty (30) days' notice to the City, the Grantee may discontinue its local office and, provided that, the City may hold a public hearing concerning the need for the local office prior to its closing.
14. Additional Customer Service Requirements. The City expressly reserves authority to adopt additional or modified customer service requirements to address subscriber concerns or complaints in accordance with federal law. Such requirements shall be applied to Grantee only to the extent they are consistent with, and do not abrogate, the terms of this Franchise. Nothing in this section shall prevent or affect the ability of Grantee to object to the application of any new customer service requirements based on state or local law.
15. Letter of Credit.
 - a. The Grantee shall deliver to the City an irrevocable and unconditional Letter of Credit, in form and substance acceptable to the City, in the amount of \$10,000.
 - b. The Letter of Credit shall provide that funds will be paid to the City, upon written demand of the City, in payment for any monies owed by Grantee pursuant to its obligations under this Franchise. The City may also, in its sole discretion, charge to and collect from the Letter of Credit liquidated damages in an amount of up to \$100.00 per violation of any provision of this Franchise as provided below. Such liquidated damages may be assessed per day for each day, or part thereof, such violation continues.
 - c. The City shall provide a written notice of violation giving Grantee thirty (30) days in which to cure such violation. At any time after the cure period, provided Grantee remains in violation, the City may draw from the Letter of Credit.
 - d. Grantee may notify the City in writing during the cure period that there is a dispute as to whether a violation or failure has in fact occurred. Grantee shall specify with particularity the matters disputed and the basis for dispute. Such notice shall toll any draw on the letter of credit until Grantee's dispute is heard. The City shall hear Grantee's dispute at the next regularly scheduled Council meeting or within sixty (60) days of receipt of said notice

of dispute, whichever is shorter. In the event City determines that a violation has taken place, such determination shall be deemed final, subject to Grantee's right to appeal such final determination to a court or forum of competent jurisdiction.

- e. If the City draws upon the Letter of Credit, Grantee shall replace the same within ten (10) days and shall deliver to the City a like replacement Letter of Credit.
- f. The drawing on the Letter of Credit shall not be a waiver or release of default and shall not be deemed an exclusive remedy.

16. Periodic Evaluation.

- a. The City may require evaluation sessions during the term of this Franchise not more than annually, upon thirty (30) days written notice to Grantee.
- b. All evaluation sessions shall be open to the public. Grantee shall notify its Subscribers of any evaluation sessions by announcement of at least sixty (60) seconds in duration on at least one (1) Basic Service channel between the hours of 7:00 p.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, application of new technologies, programming offered, access channels, facilities and support, municipal uses of cable, customer complaints, amendments to this Franchise, judicial rulings, FCC rulings, line extension policies and any other topics the City and Grantee deem relevant.
- d. As a result of a periodic review or evaluation session, the City may request Grantee to amend the Franchise to provide additional services or facilities as are mutually agreed upon and which are both economically and technically feasible taking into consideration the remaining term of the Franchise.

SECTION VII.

PEG AND INSTITUTIONAL SERVICES

1. Public, Educational and Government Access.

- a. Responsibility for PEG Access. The City or its PEG Access programming designee, Itasca Community Television, Inc. ("ICTV"), will operate, administer, and manage PEG Access. The City or its designee may implement rules associated with PEG Access. As long as Competition exists, the City will not designate the competing franchisee or its affiliates to manage PEG Access.

b. PEG Channels and Programming.

1. The Grantee shall cablecast on the PEG Access channels all PEG programming produced or created by the City or its designee for carriage, including live programming, which is delivered to Grantee. The signal delivered to Grantee shall comply with applicable FCC technical standards.
2. The Grantee shall dedicate two (2) channels for PEG Access use. Nothing herein shall diminish the City's rights to secure additional channels pursuant to Minn. Stat. § 238.084, which is expressly incorporated herein by reference. Channel time and playback of prerecorded programming on the PEG access and community program channel(s) must be provided at no additional charge to the City and the public.
3. At such time that the City or ICTV produces PEG Access programming in high definition (HD), Grantee shall, upon one hundred twenty (120) days' written notice and subject to equipment availability, provide one (1) PEG Access Channel in HD provided that the signals received meet Grantee's technical specifications for HD channels and the Grantee's out-of-pocket costs to receive and distribute the HD programming ("Grantee Costs") are reimbursed by the City. Upon receipt of the City's request to convert the PEG Channel to HD, Grantee shall obtain and share relevant information regarding expected project costs, including work orders, vendor quotes and bid specifications, and shall work cooperatively to attempt to minimize the total cost. Once the estimated Grantee Costs are determined and approved by the City and the City has made payment for the approved Grantee Costs, the parties shall move forward with the conversion. The Grantee shall provide a final statement of Grantee Costs upon completion of the HD conversion and shall either include an invoice for any additional Grantee Costs incurred or shall issue a refund to the City for any Grantee Costs not incurred but paid for by the City. Nothing in this section shall make the Grantee responsible for Grantee Costs.
4. Grantee shall simulcast the HD PEG Access Channel in HD and SD; provided however, that at such time as Grantee delivers substantially all of its Channels in HD or other digital format, Grantee may determine that it will cease simulcasting the PEG Channel in SD. At such time City may convert the second PEG Access Channel to HD in accordance with Section 7.b.3 herein.
5. The Grantee shall provide to each of its Subscribers who receive all, or part of, the total Cable Services offered over its System, reception

on the PEG Access channels at no additional charge. The PEG Access channels may be used by the public, local educational authorities, and local government on a first-come, first-served, nondiscriminatory basis. During those hours that the specially designated access channels are not being used by the public, educational authorities or local government, the Grantee may lease time to commercial or noncommercial users on a first-come, first served, nondiscriminatory basis if the demand for that time arises. The Grantee may also use the specially designated access channels for local origination during those hours when the channel is not in use by the public, local educational authorities, local government, or commercial or noncommercial users who have leased time.

6. Grantee shall make reasonable efforts to coordinate the cablecasting of PEG programming on the Cable System on the same Channel designations as such programming is currently cablecast (Channels 2, and 7).
 7. Grantee shall provide City and all Subscribers with at least sixty (60) days prior written notice of any PEG Channel relocation.
 8. The Grantee shall, throughout the term of this Franchise, provide the following:
 - c. Program schedule information for each PEG Access Channel shall be listed in the on-air program guides provided by the Grantee to Subscribers in the manner agreed upon between a third-party electronic programming guide vendor (“EPG provider”) at City’s expense and City.
 - d. To the extent Grantee contracts with an EPG provider to provide on screen and on-line program listings, the Grantee shall make available to the City or ICTV the contact information for such EPG provider, and Grantee shall inform the EPG provider that the City and ICTV are authorized to provide programming information for the PEG access channels at City or ICTV expense. The City or ICTV shall be responsible for providing programming information to the EPG provider.
2. PEG Support, Facilities, and Equipment.
- a. The Grantee acknowledges that under 47 C.F.R. § 76.1505 governing the provision of PEG programming by an open video system (OVS) operator, the other Cable Service provider franchised by the City must permit Grantee to connect with its PEG access channel feeds. The Grantee and such other Cable Service provider may enter into an agreement concerning interconnection and sharing of PEG feeds. In the event no agreement is reached, the City may direct Grantee to connect to the other Cable Service

provider's PEG feeds through ICTV or City facilities. The costs of completing any such connection shall be borne by Grantee.

- b. Subject to Applicable Law, Grantee shall continue to provide two-way activated capacity allowing cablecast of live or recorded programming from:
 - a. Grand Rapids City Hall, 420 N Pokegama Ave.
 - b. IRA Civic Center, 1401 NW 3rd Ave.
 - c. Grand Rapids Area Library, 140 NE 2nd St.
 - d. Grand Rapids High School, 800 Conifer Dr.
 - e. Grand Rapids Middle School, 100 NE 8th Ave.
 - f. Grand Rapids Elementary East, 1195 NE 10th St.
 - g. Grand Rapids Elementary West, 901 SW 22nd Ave.
 - h. Reif Performing Arts Center, 720 Conifer Dr.
 - i. ICC, 1851 E US Hwy. 169
 - j. PUC/Public Works Service Center, 500 SE 4th St.
 - k. Itasca County Court House, 123 NE 4th St.
 - l. ICTV, 819 NE 4th St. *

Grantee reserves all rights it may have to assess a lawful fee for such services or facilities or deduct the cost or value of providing such services or facilities from Franchise Fees to the extent provided in Applicable Law. The City may reduce the number of sites with two-way activated capacity by providing notice to Grantee of those sites at which it does not wish to retain such capacity.

The Grantee may meet this obligation via an agreement with the City's PEG designee and any provider of Service in the City. For example, the Grantee and any other Cable Service provider may divide responsibility for providing program origination capacity from the above-listed sites.

- c. Grantee shall continue to pay \$1.25 per Subscriber, per month in support of PEG-related needs. Such fee may be itemized as a "PEG Fee" and passed through on Subscriber's bills. Not more than once every three (3) years, upon a public hearing and action by the City Council, the PEG Fee may be increased or decreased by \$.25 per Subscriber, per month up to a total not to exceed \$2.00 per Subscriber, per month. Any increase may only be adopted upon a City Council finding, supported by substantial evidence, that the increase is consistent with: 1) cost of living or inflation indexes, or; 2) the costs of PEG-related facilities and equipment.
- d. On or before November 1st, the City shall provide notice to the Grantee and public of a hearing on any proposed increase in the PEG Fee, to be effective no later than sixty (60) days after any City decision to increase or decrease

the PEG Fee. The City will impose equivalent per-Subscriber PEG obligations on any other cable operator.

- e. Cable Service to Public Buildings. Grantee shall continue to provide a Drop, outlet and monthly Cable Service (excluding premium and pay per view channels) to the following three (3) public buildings:
 - i. Grand Rapids City Hall, 420 N Pokegama Ave
 - ii. Itasca County Court House, 123 NE 4th St.
 - iii. ICTV, 819 NE 4th St.

Any public institution may add outlets at its own expense. However, no redistribution of the free Cable Service provided pursuant to this Section shall be allowed without the Grantee's prior written consent. Grantee may assess a lawful fee for such services or facilities or deduct the value of providing such services or facilities from Franchise Fees to the extent provided in Applicable Law. The City may reduce the number of sites with two-way activated capacity by providing notice to Grantee of those sites at which it does not wish to retain such capacity.

SECTION VIII.

OPERATION AND ADMINISTRATION PROVISIONS

1. Administration of Franchise. The City shall have authority to administer the Franchise and to monitor the performance of the Grantee pursuant to the Franchise.
2. Franchise Fee.
 - a. During the term of the Franchise, Grantee shall pay to the City a Franchise Fee in an annual amount equal to five percent (5%) of its Gross Revenues (subject to the deductions in Section VII).
 - b. Any payments due under this provision shall be payable quarterly. The payment shall be made within sixty (60) days of the end of each of Grantee's current fiscal quarters together with a report in form reasonably acceptable to City and Grantee and which shows the basis for the computation.
 - c. All amounts paid shall be subject to audit and recomputation by the City and acceptance of any payment shall not be construed as an accord that the amount paid is in fact the correct amount.
3. Access to Records. The City shall have the right to inspect, upon reasonable notice and during Normal Business Hours, any records maintained by Grantee which relate to Grantee's operations under this Franchise, including specifically Grantee's revenue records, subject to the privacy provisions of 47 U.S.C. § 521 et seq. Grantee shall be required to provide copies of such requested documents to the City

unless such documents are confidential and are available for City inspection at a location in the City.

4. Reports to be Filed with the City. Grantee shall file with the City, at the time of payment of the Franchise Fee, a report of all Gross Revenues certified by an officer of the Grantee. At City's request, and with Grantee's agreement which will not be unreasonably withheld, Grantee shall prepare and furnish to the City such other reports with respect to the operations, affairs, transactions or property, as they relate to this Franchise or Cable Services. The form of such reports shall be mutually agreed upon by City and Grantee. To the extent permitted by law, the City shall prevent disclosure of Gross Revenues reports and other reports explicitly identified as "confidential trade secrets" pursuant to Applicable Law.

**SECTION IX.
GENERAL FINANCIAL AND INSURANCE PROVISIONS**

1. Performance Bond.
 - a. At the time the Franchise becomes effective and at all times thereafter, until the Grantee has liquidated all of its obligations with the City, the Grantee shall furnish a performance bond to the City in the amount of \$25,000 in a form and with such sureties as are reasonably acceptable.
 - b. The security must be conditioned upon the faithful performance of the Grantee according to the terms of the Franchise and upon the further condition that in the event the Grantee shall fail to comply with the Franchise, there shall be recoverable jointly and severally from the principal and surety of the bond any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the Grantee, plus a reasonable allowance for attorneys' fees and costs, up to the full amount of the bond, and further guaranteeing payment by the Grantee of claims, liens and taxes due the City which arise by reason of the construction, operation, or maintenance of its system in the City.
 - c. The rights reserved by the City with respect to the bond shall not be deemed an exclusive remedy are in addition to all other rights the City may have under the Franchise or any other law. No action, proceeding or exercise of a right with respect to the performance bond shall affect any other right the City may have. The City may, from year to year, in its sole discretion, reduce the amount of the bond.
 - d. The Grantee shall be given thirty (30) days' notice of any franchise violation, or other claim, liability or obligation giving rise to City's right to make a claim under the bond. During this 30-day notice period, the Grantee may either cure the violation, claim, liability or other obligation on which the City's claim is based or dispute the City's determination that there is a lawful basis for making a claim under the bond. If Grantee disputes City's

determination that there is a lawful basis for making a claim under the bond, such written notice by Grantee to City shall specify with particularity the matters disputed by Grantee and shall toll any draw on the performance bond until such dispute is heard. Within forty-five (45) days of the City's receipt of Grantee's notice of dispute of the City's claim, the City shall hold a public hearing with respect to Grantee's notice of dispute.

- e. In the event the City, after any public hearing required by this Section, issues a written decision that the violation, claim, liability, or obligation upon which the City's claim on the Grantee's performance bond is lawful and in compliance with the Franchise and has not been cured, corrected or satisfied within this thirty (30) day cure period, the City may make a claim pursuant to the bond. The City may grant additional time beyond the initial cure period before making a claim under the bond in the event Grantee requests additional time and the City determines that the Grantee has made a good faith effort towards cure and such additional time is necessary to completely cure the alleged violation.
- f. In the event this Franchise is revoked or the rights hereunder relinquished or abandoned by Grantee, the City shall be entitled to collect the full amount of the performance bond as liquidated damages.

2. Indemnification of the City.

- a. The City, its officers, boards, committees, commissions, elected officials, employees and agents shall not be liable for any loss or damage to any real or personal property of any Person, or for any injury to or death of any Person, arising out of or in connection with Grantee's construction, operation, maintenance, repair or removal of Grantee's System.
- b. Grantee shall indemnify, defend, and hold harmless the City, its officers, boards, committees, commissions, elected officials, employees and agents, from and against all liability, damages, and penalties which they may legally be required to pay as a result of Grantee's exercise of this Franchise. Grantee's obligations herein shall not include any alleged or actual liability which is based on City's or ICTV's operation of PEG Access Channels, facilities or equipment or the programming provided via such PEG Access Channels, facilities or equipment. Nothing herein shall be construed as a waiver by City of its defenses and limitations available to it under law, including the Minnesota Municipal Tort Liability Act, Minnesota Statutes Section 466.01 et. seq.
- c. Nothing in this Franchise relieves a Person, from liability arising out of the failure to exercise reasonable care to avoid injuring the Grantee's facilities while performing work connected with grading, regarding, or changing the line of a Right-of-Way or public place or with the construction or reconstruction of a sewer or water system.

- d. In order for City to assert its rights to be indemnified, defended, and held harmless, City must, with respect to each claim:
 - i. Promptly notify Grantee in writing of any claim or legal proceeding which gives rise to such right.
 - ii. Afford Grantee the opportunity to participate in any compromise, settlement or other resolution or disposition of any claim or proceeding; and
 - iii. Fully cooperate with reasonable requests of Grantee, at Grantee's expense, in its participation in compromise, settlement or resolution or other disposition of such claim or proceeding subject to Paragraph 2 above.
3. Insurance.
- a. Grantee shall file with its acceptance of this Franchise, and at all times thereafter maintain in full force and effect at its sole expense, a comprehensive general liability insurance policy, in protection of the Grantee, and the City, its officers, elected officials, boards, commissions, agents and employees for damages which may arise as a result of this Franchise.
 - b. The policies of insurance shall be in the sum of not less than Two Million Dollars (\$2,000,000.00) for personal injury or death of any one Person, for personal injury or death of two or more Persons in any one occurrence, for property damage to any one person, or for property damage resulting from any one act or occurrence.
 - c. The policy or policies of insurance shall be maintained by Grantee in full force and effect during the entire term of the Franchise. Each policy of insurance shall contain a statement on its face that the insurer will not cancel the policy or fail to renew the policy, whether for nonpayment of premium, or otherwise, and whether at the request of Grantee or for other reasons, except after sixty (60) days advance written notice have been provided to the City.

SECTION X.
SALE, ABANDONMENT, TRANSFER AND REVOCATION OF FRANCHISE

1. City's Right to Revoke. In addition to all other rights which the City has pursuant to law or equity, the City reserves the right to revoke, terminate or cancel this Franchise, and all rights and privileges pertaining thereto, if after the hearing required herein, it is determined that:
 - a. Grantee has violated any material provision of this Franchise and failed to timely cure; or

- b. Grantee has attempted to evade any of the material provisions of the Franchise; or
- c. Grantee has practiced fraud or deceit upon the City or Subscriber.

The City may revoke this Franchise without the hearing required herein if Grantee files for bankruptcy.

2. Procedures for Revocation.

- a. The City shall provide Grantee with written notice of intent to revoke the Franchise which shall identify the basis of the revocation. Grantee shall have thirty (30) days subsequent to receipt of the notice in which to cure the violation or to provide adequate assurance of performance in compliance with the Franchise.
- b. City shall schedule a public hearing affording Grantee due process prior to revocation. The public hearing shall be scheduled after the end of the cure period and within ninety (90) days of the date of the notice of revocation. Notice of the hearing shall be provided to Grantee.
- c. The City shall provide Grantee with written notice of its final decision together with written findings of fact supplementing said decision. Only after Grantee receives written notice of the determination by the City to revoke the Franchise may Grantee appeal said decision.
- d. During the appeal period, the Franchise shall remain in full force and effect unless the term thereof sooner expires.

3. Abandonment of Service. Grantee may not discontinue providing Cable Service services without having first given three (3) months written notice to the City.

4. Removal After Abandonment, Termination or Forfeiture.

- a. In the event of termination or forfeiture of the Franchise or abandonment of Grantee's System, the City shall have the right to require Grantee to remove all or any portion of its System from all Rights-of-Way and public property within the City; provided, however, that the Grantee shall not be required to remove its System if Grantee continues to be authorized to provide non-Cable Service pursuant to state or federal law.
- b. If Grantee has failed to commence removal of its System, or such part thereof as was designated by the City, within one hundred twenty (120) days after written notice of the City demand for removal is given, or if Grantee has failed to complete such removal within twelve (12) months after written notice of the City demand for removal is given, the City shall have the right to apply funds secured by the Letter of Credit and Performance Bond toward removal and/or declare all right, title, and interest to Grantee's System to be in the City with all rights of ownership including, but not limited to, the

right to operate the System or transfer the System to another for operation by it pursuant to the provisions of 47 U.S.C. § 547.

5. Sale or Transfer of Franchise.

- a. No sale, transfer, or corporate change of or in Grantee or its System, including, but not limited to, the sale of a majority of the entity's assets, shall take place until the parties to the sale, transfer, or corporate change file a written request with the City for its approval and such approval is granted by the City, provided, however, that said approval shall not be required where Grantee grants a security interest in its Franchise and assets to secure an indebtedness.
- b. Any sale, transfer, exchange or assignment of stock or other equity interest in Grantee so as to create a new controlling interest shall be subject to the requirements of this Section X.5. The term "controlling interest" as used herein means actual working control in whatever manner exercised.
- c. The City shall have such time as is permitted by applicable federal law in which to review a transfer request, but in no event less than one hundred twenty (120) days.
- d. The City may seek to require any transferee acquiring this Franchise to reimburse the City for reasonable out-of-pocket outside legal and consulting costs associated with the City's review of any request to transfer. Neither this Section, Section II.1(j), nor any other provision of this franchise shall be construed constitute a waiver by Grantee or any transferee of, or otherwise affect, any rights of Grantee or transferee under 47 U.S.C. § 542(b), all of which are expressly reserved.
- e. In no event shall a sale, transfer, corporate change, or assignment of ownership or control pursuant to Subparagraph (a) or (b) of this Section be approved without the entity to which the Franchise is transferred becoming a signatory to this Franchise and assuming all rights and obligations hereunder, and assuming all other rights and obligations of the transferor to the City.
- f. In the event of any proposed sale, transfer, corporate change, or assignment pursuant to Subparagraph (a) or (b) of this Section, the City shall have the right to purchase Grantee's System provided, however, that the City shall not be permitted to purchase the System if Grantee continues to be authorized to provide telecommunications service pursuant to state or federal law.

**SECTION XI.
PROTECTION OF INDIVIDUAL RIGHTS**

1. Discriminatory Practices Prohibited. Grantee shall comply at all times with all other applicable federal, state, and local laws, and all executive and administrative orders relating to nondiscrimination.
2. Subscriber Privacy.
 - a. Grantee shall comply with the subscriber privacy-related requirements of 47 U.S.C. § 551. No signals including signals of a Class IV Channel may be transmitted from a Subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the Subscriber. No penalty shall be invoked for a Subscriber's failure to provide such authorization. The authorization shall be revocable in writing at any time by the Subscriber without penalty of any kind whatsoever.
 - b. No lists of the names and addresses of Subscribers or any lists that identify the viewing habits of Subscribers shall be sold or otherwise made available to any party other than to Grantee and its employees for internal business use, and also to the Subscriber subject of that information, unless Grantee has received specific written authorization from the Subscriber to make such data available. No penalty shall be invoked for a Subscriber's failure to provide such authorization. The authorization shall be revocable in writing at any time by the Subscriber without penalty of any kind whatsoever.
 - c. Written permission from the Subscriber shall not be required for the conducting of System-wide or individually addressed electronic sweeps for the purpose of verifying network integrity or monitoring for the purpose of billing. Confidentiality of such information shall be subject to the provision set forth in Subparagraph (b) of this Section.

SECTION XII. MISCELLANEOUS PROVISIONS

1. Franchise Renewal. Any renewal of this Franchise shall be performed in accordance with applicable federal, state and local laws and regulations. The term of any renewed Franchise shall be limited to a period not to exceed fifteen (15) years.
2. Work Performed by Others. All obligations of this Franchise shall apply to any subcontractor or others performing any work or services pursuant to the provisions of this Franchise, however, in no event shall any such subcontractor or other Person performing work obtain any rights to provide Cable Service. Grantee shall provide notice to the City of the name(s) and address(es) of any entity, other than Grantee, which performs services pursuant to this Franchise involving the Right-of-Way, public property or new construction or system upgrade.

3. Amendment of Franchise Ordinance. Except as otherwise provided herein, no provision of this Franchise shall be amended or otherwise modified except by an instrument, in writing, duly executed by the City and the Grantee. Such written amendments may be made subsequent to a review session or at any other time if the City and Grantee agree that such an amendment will be in the public interest or if such an amendment is required due to changes in federal, state or local laws.
4. Compliance with Federal and State Laws. The Grantee and City shall conform to applicable state laws and rules not later than one year after they become effective, unless otherwise stated, and shall conform to applicable federal laws and regulations as they become effective.
5. Preemption. In the event that federal or state laws, rules, or regulations preempt a provision or limit the enforceability of a provision of this Franchise, then such provision shall be preempted to the extent, and for the time, provided by law. If such federal or state law, rule, or regulation is subsequently repealed, rescinded, amended, or otherwise changed such that any provision herein is no longer preempted, such provision shall return to full force and effect and be binding on the parties hereto without further action by either party or penalty to either party.
6. Severability. If any section, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional by any court of competent jurisdiction over the subject matter of this Franchise, then such provision shall be considered a separate, distinct and independent part of this Franchise and such determination shall not affect the validity or enforceability of all other provisions hereof.
7. Force Majeure. In the event Grantee's performance of any of the terms, conditions, obligations or requirements of this Franchise is prevented due to a cause beyond its control, such failure to perform shall be excused for the period of such inability to perform.
8. Nonenforcement by City. Grantee shall not be relieved of its obligations to comply with any of the provisions of this Franchise by reason of any failure or delay of the City to enforce prompt compliance. The City may only waive its rights hereunder by expressly so stating in writing. Any such written waiver by the City of a breach or violation of any provision of this Franchise shall not operate as or be construed to be a waiver of any subsequent breach or violation.
9. Rights Cumulative. All rights and remedies given to the City by this Franchise or retained by the City shall be in addition to and not exclusive of any and all other rights and remedies, existing or implied, now or hereafter available to the City, at law or in equity.
10. Grantee Acknowledgment of Validity of Franchise. Grantee acknowledges that it has had an opportunity to review the terms and conditions of this Franchise and has the right to enter into, execute and perform its obligations under this Franchise.

Nothing in this Franchise shall be construed as a waiver of any rights by the City or Grantee.

11. Entire Agreement. This Franchise, including all Exhibits, embodies the entire understanding and agreement of the City and the Grantee.

**SECTION XIII.
PUBLICATION EFFECTIVE DATE; ACCEPTANCE AND EXHIBITS**

1. Publication: Effective Date. This Franchise shall be published in accordance with applicable local and Minnesota law. The Effective Date of this Franchise shall be January 1, 2021, subject to acceptance by Grantee in accordance with the provisions of Section XIII, 2.
2. Acceptance.
 - a. Grantee shall accept this Franchise prior to enactment by the City. Such acceptance by the Grantee and enactment by the City without modification of any Franchise terms or conditions shall be deemed the grant of this Franchise for all purposes provided.
 - b. Upon acceptance and enactment of this Franchise, the Grantee shall be bound by all the terms and conditions contained herein. In the event acceptance does not take place, or should all ordinance adoption procedures and timelines not be completed, this Franchise and any and all rights previously granted to Grantee shall be null and void.
 - c. Grantee shall accept this Franchise in the following manner:
 - i. This Franchise will be properly executed and acknowledged by Grantee and delivered to the City.
 - ii. With its acceptance, Grantee shall also deliver the letter of credit, performance bond and insurance certificates required herein that have not previously been delivered.

Passed and adopted this _____ day of 2021.

(Signature Page Follows)

CITY OF GRAND RAPIDS

MAYOR

ATTEST:

By: _____

Its _____

ACCEPTED: This Franchise is accepted and the undersigned agrees to be bound by its terms and conditions.

Dated: _____

PAUL BUNYAN RURAL TELEPHONE COOPERATIVE

By: _____

Its _____

Published in the _____ this ____ day of _____, 2021.