



## Ordinance No. 19-\_\_

### **An Ordinance Establishing Certain Regulations Governing the Delivery of Cable Service in the City of Elk River, Minnesota**

The City Council of the City of Elk River, Minnesota ordains:

**REPEAL AND REPLACE** Ordinance 05-01, Cable Ordinance, is hereby repealed in its entirety and replaced with the following:

#### **SECTION 1. FINDINGS AND INTENT**

The City finds that the delivery of Cable Service and related communications services may contribute significantly to the communication needs and desires of residents of the City, benefit local economic development, and improve public and municipal services. The City's intent in adopting this Cable Ordinance is to encourage further development of Cable Service and related communications services in the City, and to ensure that all Cable Service providers are subject to comparable obligations and burdens.

#### **SECTION 2. SHORT TITLE**

This Ordinance will be known and cited as the "Cable Ordinance."

#### **SECTION 3. DEFINITIONS**

For the purposes of this Cable Ordinance, the following terms, phrases, words, and their derivations have the meaning given herein. Unless otherwise provided herein, terms, phrases and words contained in this Cable Ordinance shall have the meaning ascribed in the Cable Act, 47 U.S.C. Sec. 521, *et seq.*, or if not defined herein or in the Cable Act will have their normal and customary meaning. When not inconsistent with the context, words in the singular number include the plural number. The words "must" and "will" are always mandatory and not merely directory. The word "may" is directory and discretionary and not mandatory.

- a. "Basic Cable Service" has the meaning ascribed in Cable Act Section 522(3).
- b. "Cable Communications System," "Cable System" or "System" has the meaning ascribed in Cable Act Section 522(7).
- c. "Cable Programming Service" has the meaning ascribed in Cable Act Section 543(l)(2).
- d. "Cable Service" has the meaning ascribed in Cable Act Section 522(6).
- e. "Channel" shall mean a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel.

f. “City” means the City of Elk River, Minnesota, a municipal corporation, in the State of Minnesota.

g. “Commission” means the Sherburne/Wright Counties Cable Communications Commission, a municipal joint powers entity consisting of the following municipalities: Big Lake, Buffalo, Cokato, Dassel, Delano, Elk River, Maple Lake, Monticello, Rockford and Watertown.

h. “Converter” means a customer premises device required to receive Cable Service.

i. “Drop” means the cable that connects the ground block at the Subscriber’s location to the nearest distribution point of the System.

j. “FCC” means the Federal Communications Commission, or its lawful successor.

k. “Franchise”, “Cable Franchise” or “Franchise Agreement” means an agreement between the City and any provider of Cable Service pursuant to this Cable Ordinance granting authorization to construct, operate and maintain a System and provide Cable Service in the City.

l. “Franchise Fee” has the meaning ascribed in Cable Act Section 542(g).

m. “Grantee” is any recipient of a Franchise, and its agents and employees, lawful successors, transferees or assignees.

n. “Gross Revenues” means all revenues, as determined in accordance with Generally Accepted Accounting Principles (“GAAP”), received by a Grantee or its affiliates from the operation of a Cable System to provide Cable Service in the City. By way of example and not limitation, Gross Revenues shall include any advertising revenues received by a Grantee or its affiliates in connection with the provision of Cable Service. Gross Revenues shall not include revenues received by a Grantee or its affiliates from the provision of Telecommunications Services or other non-Cable Services in the City, bad debt, credits, refunds and deposits paid to Subscribers, or any taxes, fees or assessments of general applicability collected by a Grantee which are imposed directly on a Subscriber and which are collected by a Grantee for such governmental unit including any PEG Capital Fees. A Franchise Fee is not such a tax, fee or assessment.

o. “Installation” means the connection of a System from a distribution cable to the point of connection, including Standard Installations and custom Installations.

p. “Normal Business Hours” has the meaning ascribed in the FCC’s rules, 47 C.F.R. 76.309(c)(4).

q. “Normal Operating Conditions” has the meaning ascribed in the FCC’s rules, 47 C.F.R. 76.309(c)(4).

r. “PEG Access Facilities” means public, educational, and governmental programming channels, or any equipment or facilities for use of such Channels as required by a Franchise.

s. “Person” has the meaning ascribed in Cable Act Section 522(15).

t. “Right-of-Way” or “Rights-of-Way” means the area on, below, or above a public roadway, highway, street, cartway, bicycle lane, and public sidewalk in which the local government unit has an interest, including other dedicated rights-of-way for travel purposes and utility easements of local government units.

u. “Right-of-Way Ordinance” means an ordinance of general applicability adopted and uniformly applied as to similarly situated ROW occupants by the City establishing requirements regarding regulation, management and use of Rights-of-Way, including registration and permitting requirements.

v. “Standard Installation” means any residential installation that can be completed using a Drop of 125 feet or less.

w. “Subscriber” means any Person who lawfully receives Cable Service via a System.

x. “Telecommunications Services” shall have the meaning ascribed in 47 U.S.C. § 153(46).

## **SECTION 4. FRANCHISES**

### **Section 4.1 Generally**

a. No Person may construct, operate, or maintain a Cable System or provide Cable Service in the City unless and until such Person is granted a Franchise. All Franchises must be granted pursuant to the provisions of this Cable Ordinance. Notwithstanding any provision to the contrary, any Franchises and this Cable Ordinance shall at all times be subject to, and without waiving, applicable law.

b. Any Franchise granted hereunder will authorize a Grantee to deliver Cable Service and construct, operate and maintain a Cable System in the Rights-of-Way in the City.

c. All Franchises shall be nonexclusive and City may grant additional Franchises at any time. The City will not grant an additional Franchise on terms and conditions more favorable or less burdensome than those in an existing Franchise. The City may impose additional terms and conditions in any additional Franchise.

d. The City shall comply with Section 14.4 of this Cable Ordinance in the event an additional provider is legally authorized to provide Cable Service.

e. This Cable Ordinance and Franchises granted pursuant hereto are intended to comply with Minnesota Statutes Chapter 238. Any applicable requirement established by Minn. Stat. 238.084 not expressly incorporated in this Cable Ordinance or a Franchise shall be deemed incorporated by reference in the Franchise as though fully set forth therein.

## **Section 4.2 Use of Rights-of-Way**

a. Use of Rights-of-Way to operate a Cable System and provide Cable Service must not be inconsistent with the terms and conditions by which such Rights-of-Way were created or dedicated. Use of Rights-of-Way is subject to all generally applicable legal requirements including any Right-of-Way Ordinance enacted by the City and Section 5 herein.

b. Upon written request, the City shall have the right to review, subject to the confidentiality protections provided in Section 9.3 herein, Grantee's System location maps at a mutually agreed upon location.

## **Section 4.3 Tree Trimming**

Subject to applicable law, a Grantee is authorized to trim any trees upon and overhanging the Rights-of-Way, alleys, sidewalks, or public easements of City so as to prevent the branches of such trees from coming in contact with wires and cables of a System.

## **Section 4.4 Franchise Term.**

Franchises will be granted for a term established in the Franchise Agreement. No Franchise may be granted for a period exceeding fifteen (15) years from the date of acceptance by Grantee.

## **Section 4.5 Regulation of Cable Service.**

Any Franchise Agreement adopted pursuant to this Cable Ordinance will define the contractual rights and obligations of the City and Grantee, provided however that a Grantee remains subject to the lawful exercise of the City's police power, ordinance-making authority, and power of eminent domain.

## **Section 4.6 Initial Franchise Applications.**

a. Upon request or its own initiative, the City may initiate the cable Franchise application process required by Minnesota Statutes Section 238.081. Any Person desiring an initial Franchise must file an application with the City.

b. The City will establish an application fee in an amount to offset the costs of processing applications and awarding an initial Franchise. Such application fees will not constitute a Franchise Fee.

c. Upon receipt of an application for an initial Franchise, City staff will prepare a report and recommendations to the City Council regarding the application(s).

d. A public hearing concerning applications will be held prior to rejection or acceptance of applications, and award of any initial Franchises.

## **Section 4.7 Franchise Renewal.**

Franchise renewals will be conducted in accordance with applicable laws.

## **SECTION 5. CONSTRUCTION STANDARDS**

### **Section 5.1 Registration, Permits and Construction Codes.**

Within ninety (90) days of acceptance of an initial Franchise, a Grantee shall apply for any necessary governmental permits, licenses, certificates, and authorizations to construct, repair, replace, relocate, operate, maintain or reconstruct a System. A Grantee must strictly adhere to all state and local laws and building and zoning codes currently or hereafter applicable to location, construction, installation, operation or maintenance of the facilities used to provide Cable Service in the City.

### **Section 5.2 Repair of Rights-of-Way and Property.**

a. Consistent with any generally applicable Rights-of-Way Ordinance adopted by the City or applicable law if a City has not adopted a Rights-of-Way Ordinance, any Rights-of-Way or other property disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance or reconstruction of a Cable System shall be promptly and fully restored by the Grantee performing such work, at its expense, to a condition as good as that prevailing prior to such work.

b. If a Grantee fails to promptly perform the restoration required herein, the City shall have the right, following reasonable written notice to Grantee, to restore Rights-of-Way and other public property to a condition as good as that prevailing prior to the Grantee's work. The City shall be fully reimbursed by the Grantee for its actual costs relating to such restoration.

### **Section 5.3 Undergrounding of Facilities.**

a. In all areas of the City where utility facilities are required to be placed underground, or where all other utility lines are underground, a Grantee must construct and install System facilities underground.

b. A Grantee must bury new underground Drops within a reasonable time period, subject to weather conditions. In the event the ground is frozen, a Grantee will be permitted to delay burial until the ground is suitable for burial which in no event must be later than June 30th.

### **Section 5.4 [Intentionally Omitted]**

### **Section 5.5 Safety Requirements.**

a. A Grantee shall at all times keep and maintain the System in good condition, order, and repair so as to avoid endangering the life or property of any Person; employ ordinary and reasonable care and common industry practices to avoid causing damage, injuries, or nuisances to the public, and; keep and maintain the System in accordance with all federal, state and local laws and regulations including the National Electric Safety Code.

b. A Grantee must install and maintain equipment and facilities in accordance with all applicable federal and state laws and regulations, any Right-of-Way Ordinance, and the requirements of the National Electric Safety Code.

## **SECTION 6. SYSTEM DESIGN AND EXTENSION PROVISIONS**

### **Section 6.1 System Capacity and Channels.**

At a minimum, any Franchise granted hereunder shall describe the Grantee's network in terms of the total System capacity such as the total number of analog and digital video channels that can be provided.

### **Section 6.2 Cable Service Availability.**

a. Each Franchise will identify a required service area in which a Grantee will be required to offer Cable Service to all dwellings, homes and businesses, subject to a reasonable density threshold. Any additional Franchise will include a service area that is no more favorable or less burdensome than the service area in an existing Franchise.

b. Any Franchise granted hereunder may establish requirements for the extension of the System and provision of Cable Service to areas that may be annexed by the City beyond the initially required service area.

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

### **Section 6.3 Non-Standard Installations.**

A Grantee must provide Cable Service to any Person requesting other than a Standard Installation except that a Grantee may charge for the incremental increase in material and labor costs incurred above the cost of making a Standard Installation.

### **Section 6.4 Technical Standards.**

Any System offering Cable Service in the City must comply, at minimum, with the technical standards promulgated by the FCC relating to Cable Systems pursuant to Title 47, Section 76.601 to 76.617, as may be amended or modified from time to time.

### **Section 6.5 System Testing.**

a. A Grantee shall perform all System testing required pursuant to the FCC's technical standards and requirements.

b. Demand for special tests may be made on the basis of complaints received or other evidence indicating an unresolved controversy or noncompliance. Such tests shall be limited to the

particular matter in controversy or unresolved complaints. The City shall arrange its request for such special testing so as to minimize hardship or inconvenience to Grantee or to the Subscribers caused by such testing. Before ordering such tests, Grantee shall be afforded thirty (30) Days to correct problems or complaints upon which tests were ordered. The City shall meet with 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, City wishes to commence special tests and the thirty (30) Days have elapsed without correction of the matter in controversy or unresolved complaints, the tests shall be conducted by a qualified engineer mutually selected by City and Grantee based on a mutually agreed upon scope of work and cost. The parties shall bear their respective costs for the testing, with the City bearing the cost of special testing unless such testing reveal that the source of the technical difficulty is within the Grantee's reasonable control, in which case the cost of the testing must be borne by the Grantee.

### **Section 6.6 FCC Reports.**

The results of tests required to be filed by Grantee with the FCC shall also be copied to City.

### **Section 6.7 Emergency Alert System.**

A Grantee shall comply with 47 U.S.C. 544(g) and all regulations issued pursuant thereto with respect to an Emergency Alert System ("EAS"). If a Grantee provides an EAS, then the City shall permit only appropriately trained and authorized Persons to operate the EAS equipment and shall take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in inappropriate use thereof, or any loss or damage to the Cable System. The City shall hold the Grantee, its employees, officers and assigns harmless from any claims or costs arising out of use of the EAS, including, but not limited to, reasonable attorneys' fees and costs.

## **SECTION 7. CONSUMER PROTECTION AND CUSTOMER SERVICE STANDARDS**

### **Section 7.1 Regulation of Cable Service Rates.**

The City may regulate rates for the provision of Cable Service to the extent allowed under federal and state law(s). A Grantee must file a list of current Subscriber rates and charges with the City, which lists will be maintained on file with City and will be available for public inspection. For purposes of this section, the availability of this information on a Grantee's website shall constitute compliance. A Grantee shall comply with applicable law in providing the City and Subscribers with notice of any change in a Cable Service rate or charges.

### **Section 7.2 Sales Procedures.**

A Grantee may not exercise deceptive sales procedures that violate state laws when marketing any of its Cable Services within City. A Grantee may conduct marketing consistent with local ordinances and other applicable laws and regulations.

### **Section 7.3 Telephone Inquiries and Complaints.**

A Grantee must 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. A Grantee must comply with the FCC's customer service standards, as amended, a current copy of which is attached hereto.

### **Section 7.4 Complaint and Other Service Records.**

a. Upon written request by the City, and subject to a Grantee's obligation to maintain the privacy of certain information, a Grantee must prepare and maintain written records of all written complaints received and the resolution of such complaints for a period of three (3) years, including the date of such resolution.

b. Written complaint records for a period of three (3) years must be on file at the office of a Grantee. Upon written request by the City, a Grantee must provide the City with a written summary of such complaints and their resolution and in a form mutually agreeable to the City and Grantee.

c. Upon written request by the City, a Grantee must provide detailed compliance reports on a quarterly basis for a period of three (3) years with respect to the objectively measurable service standards required in this Section. A Grantee will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards contained in this Section unless a historical record of complaints indicates a failure to comply.

### **Section 7.5 Subscriber Contracts.**

A Grantee must provide to the City upon request any standard form residential Subscriber contract utilized.

### **Section 7.6 Video Programming.**

All Franchises will comply with 47 U.S.C. § 544(b), regarding the broad categories of video programming provided. Individual programming decisions may be made in the Grantee's sole discretion.

### **Section 7.7 Billing and Subscriber Communications.**

a. A Grantee shall comply with federal law regarding giving the City and Subscribers prior notice of any changes in rates, programming services, or channel alignments.

b. Bills must be clear, concise, and understandable. Bills must clearly delineate all activity during the billing period, including optional charges, rebates, and credits. In case of a billing dispute, the Grantee must respond to a written complaint from a Subscriber within 30 days.

## **Section 7.8 Refunds and Credits.**

A Grantee shall comply with applicable law regarding the issuance of refunds or credits.

## **Section 7.9 Additional Customer Service Requirements.**

The City may adopt additional or modified customer service requirements to address subscriber concerns or complaints to the extent permitted by law.

# **SECTION 8. COMMUNITY SERVICES**

## **Section 8.1 PEG Access Facilities.**

Franchises will establish obligations to provide PEG Access Facilities to meet the community's needs and interests. The City will operate, administer and manage PEG Access programming and the City may delegate its PEG Access authority and responsibilities to the Commission. All Franchises must contain equivalent PEG Access obligations on any franchised provider of Cable Services.

## **Section 8.2 Service to Public or Educational Institutions.**

Franchises will establish obligations for the provision of free or reduced cost Cable Services to identified public or educational institutions.

# **SECTION 9. ADMINISTRATION PROVISIONS**

## **Section 9.1 Administration of Franchise.**

The City will have continuing regulatory authority over Cable Systems, Cable Services, and Franchise compliance. The City may delegate any and all regulatory authority to the Commission. A Grantee must fully cooperate with the Commission in the exercise of regulatory authority delegated by the City.

## **Section 9.2 Franchise Fee.**

a. A Grantee must pay to the City a Franchise Fee in the amount established in the Franchise Agreement, provided that the City must impose identical Franchise Fee obligations (including the percentage and Gross Revenue definition) on all Cable Service providers in the City.

b. Each Franchise Fee payment must be accompanied by a report certified by an authorized representative of the Grantee, in form reasonably acceptable to City, detailing the computation of the payment. All amounts paid must be subject to audit and recomputation by the City for the statutorily-allowed period applicable to assertion of contract claims, and acceptance of any payment must not be construed as an accord that the amount paid is in fact the correct amount.

c. A Grantee may designate that portion of a Subscriber's bill attributable to the Franchise Fee as a separate line item on the bill.

### **Section 9.3 Access to Records.**

a. The City may, upon reasonable notice and during Normal Business Hours, and subject to the privacy provisions of 47 U.S.C. § 521 et seq., inspect at a mutually convenient location any records of System operations maintained by a Grantee that relate to a Grantee's compliance with its Franchise, including specifically Grantee's Gross Revenue records. A Grantee may identify and label documents as "confidential trade secret" in accordance with Section 4.2 above.

b. A Grantee must prepare and furnish to the City such reports as City may reasonably request with respect to operation of the System and provision of Cable Services in the City.

## **SECTION 10. INDEMNIFICATION AND INSURANCE**

### **Section 10.1 Indemnification of the City.**

a. A Grantee must indemnify, defend and hold harmless the City, its officers, boards, committees, commissions, elected officials, employees and agents from and against 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 the construction, operation, maintenance, repair or removal of a System or other facilities used by a Grantee to deliver Cable Service.

b. A Grantee must indemnify, defend, and hold the City, its officers, boards, committees, commissions, elected officials, employees and agents, harmless from and against all lawsuits, claims, actions, liability, damages, costs, expenses or penalties incurred as a result of the award or enforcement of its Franchise.

c. A Grantee shall not be required to provide indemnification or defense for any intentional misconduct, willful neglect or negligence by an indemnified party, for any enforcement action taken by the City against a Grantee, for any claim based solely on the City's operation of PEG Access Facilities, delivery of PEG Access programming, or EAS messages originated by the City. Subject to the limitations in Minnesota Statutes Chapter 466, the City shall indemnify, defend and hold a Grantee harmless from any damage resulting from any intentional misconduct, willful neglect or negligence by the City, its officers, boards, committees, commissions, elected officials, employees and agents, in utilizing PEG Access Facilities or Channels, delivering EAS messages originated by the City, or in connection with work performed on or adjacent to the System.

d. With respect to each claim for indemnification:

1. the City must notify the Grantee in writing of its duty under this section within ten (10) days of receipt of any suit, claim or proceeding which gives rise to such duty;
2. the Grantee must afford the City an opportunity to participate in any compromise, settlement or other resolution or disposition of any suit, claim or proceeding; and

3. the City must cooperate with reasonable requests of the Grantee, at Grantee's expense, in its participation in a suit, claim or proceeding.

### **Section 10.2 Insurance.**

a. A Grantee must obtain and 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 operation of the System or delivery of Cable Service.

b. The policies of insurance must be in the sum of not less than One Million Dollars (\$1,000,000.00) for bodily injury or death of any one Person, and Two Million Dollars (\$2,000,000.00) for bodily injury or death of two or more Persons in any one occurrence, Five Hundred Thousand Dollars (\$500,000.00) for property damage to any one person and Two Million Dollars (\$2,000,000.00) for property damage resulting from any one act or occurrence.

c. The insurance policy must be maintained by Grantee in full force and effect during the entire term of the Franchise. Each policy of insurance must 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 thirty (30) days advance written notice have been provided to the City.

## **SECTION 11. FRANCHISE TRANSFER OR ABANDONMENT**

### **Section 11.1 Abandonment of Service.**

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

### **Section 11.2 System Removal After Abandonment, Termination or Forfeiture.**

a. In the event of termination or forfeiture of the Franchise or abandonment of the System, the City may require the 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 will not be required to remove its System to the extent it lawfully provides non-Cable Services over the System.

b. If the 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 demand for removal is given, or if the Grantee has failed to complete such removal within twelve (12) months after written demand for removal is given, the City may apply funds secured by the Franchise toward removal.

### **Section 11.3 Sale or Transfer of Franchise.**

a. No sale or transfer of ownership of a Grantee or "fundamental corporate change" in a Grantee as defined in Minn. Stat. 238.083, nor sale or transfer of a Franchise, is permitted without City approval. Any sale or transfer of stock in a Grantee creating a new controlling interest

constitutes a sale or transfer of ownership. A “controlling interest” includes majority stock ownership or a lesser amount sufficient to confer actual working control in whatever manner exercised. City approval shall not be required where a Grantee grants a security interest in its Franchise or System to secure an indebtedness.

b. A Grantee must file a written request with the City prior to any transaction described above. The City will approve or deny a transfer request within one hundred and twenty (120) days of receipt of a written request. The City will not unreasonably withhold its approval.

c. In no event will a transaction be approved unless any proposed new Grantee becomes a signatory to, and assumes all rights and obligations under, the Franchise.

d. In the event a Grantee has received a bona fide offer for purchase of its System, the City shall have the right to purchase the System for the same price and under equivalent conditions which the proposed assignee or transferee agreed to pay. The City will be deemed to have waived its right to purchase the System in the following circumstances:

1. The City does not notify the Grantee in writing, within 60 days of notice, that it intends to exercise its right of purchase; or
2. The City approves the transaction.

## **SECTION 12. PROTECTION OF INDIVIDUAL RIGHTS**

### **Section 12.1 Discriminatory Practices Prohibited.**

No Grantee may deny Cable Service or otherwise discriminate against citizens or businesses on the basis of race, color, religion, national origin, sex, age, status as to public assistance, affectional preference, or disability.

### **Section 12.2 Subscriber Privacy.**

a. A Grantee must comply with the subscriber privacy-related requirements of 47 U.S.C. § 551.

b. No 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 authorization of the Subscriber.

## **SECTION 13. UNAUTHORIZED CONNECTIONS AND MODIFICATIONS**

### **Section 13.1 Unauthorized Connections or Modifications Prohibited.**

a. It is unlawful for any Person, without the express consent of the Grantee, to make or possess, or assist anybody in making or possessing, any connection, extension, or division, whether physically, acoustically, inductively, electronically or otherwise, with or to any segment of a Grantee’s System.

b. It is unlawful for any Person to willfully interfere, tamper, remove, obstruct, or damage, or assist thereof, any part or segment of a System for any purpose.

c. Any Person found guilty of violating this section may be fined not less than Twenty Dollars (\$20.00) and the costs of the action nor more than Five Hundred Dollars (\$500.00) and the costs of the action for each and every subsequent offense.

## **SECTION 14. ENFORCEMENT OF THE CABLE ORDINANCE OR FRANCHISE**

### **Section 14.1 Violations or Other Occurrences Giving Rise to Enforcement Action.**

a. In order to take enforcement action pursuant to this Cable Ordinance or a Franchise, the City must provide the Grantee with written notice of the violation or other occurrence giving rise to the City's action.

b. The Grantee shall have thirty (30) days subsequent to receipt of the notice to cure the violation or occurrence giving rise to the City's action. Alternatively, the Grantee may, within fourteen (14) days of receipt of notice from the City, notify City in writing that there is a dispute as to whether a violation or failure has in fact occurred. Such written notice by the Grantee to the City shall specify with particularity the matters disputed by Grantee and shall toll the running of the timeframes and the accrual of penalties hereunder until completion of the process and issuance of a decision under section 14.1c-e below.

c. In the event a Grantee does not timely cure to the City's satisfaction the violation or other occurrence giving rise to the City's action, or timely disputes whether a violation has occurred, the City will schedule a public hearing affording Grantee due process. The City will endeavor to schedule the hearing for a date within ninety (90) days of the initial violation notice. Notice of the hearing must be provided to the Grantee.

d. At the completion of the hearing, the City will issue written findings of fact and its final determination.

e. In the event City determines that no violation has taken place, the City will rescind the notice of violation in writing.

### **Section 14.2 Franchise Revocation.**

a. In addition to all other rights and remedies that the City possesses pursuant to law, equity and the terms of the Franchise Agreement, the City may revoke or terminate the Franchise, and all rights and privileges pertaining thereto, in accordance with Section 14.1 if the City determines that:

1. The Grantee has violated any material requirement or provision of the Cable Ordinance or a Franchise and has failed to timely cure; or
2. The Grantee has attempted to evade any of the material provisions of the Cable Ordinance or a Franchise; or

3. The Grantee has practiced fraud or deceit upon the City or a Subscriber; or
4. The Grantee has filed for bankruptcy.

b. During any revocation proceeding and any appeal period, the Franchise will remain in full force and effect unless the term thereof sooner expires.

### **Section 14.3 Compliance with Federal, State and Local Laws.**

The City and Grantee will conform to federal and state laws and rules regarding Cable Service or the System as they become effective.

### **Section 14.4 Equal Protection.**

The City acknowledges that under Minn. Stat. §238.08, Subd. 1(b) it may only grant additional Franchises to provide Cable Service within the City on terms and conditions no more favorable or less burdensome than those in any then-current Franchise which pertain to: (1) the area served; (2) public, educational, or governmental access requirements; or (3) franchise fees. Additionally, and beyond the requirements of Minn. Stat. §238.08, any additional Franchises to provide Cable Service within the City shall not be granted on more favorable or less burdensome conditions than those in any then-current Franchise issued pursuant to this Cable Ordinance with regard to ROW access and responsibilities, complimentary service to public buildings, penalties and security, sale or transfer of ownership.

- a. If any other provider of Cable Services is lawfully authorized by the City to provide such services using facilities located wholly or partly in the Rights-of-Way of the City (“Additional Provider(s)”), the City shall, within thirty (30) days of a written request from a current Franchise holder, use best efforts to modify the current Franchise holder’s Franchise on a mutually acceptable basis to ensure that the obligations imposed by this Section 14.4 have been met.
- b. If the City fails to comply with this Section 14.4 or the parties fail to reach agreement under subsection a. above, a current Franchise holder shall have the right to initiate an action in the state or federal district court for breach of contract or other appropriate claims and seek any and all appropriate relief, including specific performance.
- c. Nothing in this Ordinance shall impair the right of the City or a current Franchise holder to seek other remedies available under law.
- d. In the event City initiates the franchising process pursuant to Minn. Stat. §238.081, the City shall notify all current Franchise holders in writing of its intent to initiate the franchising process prior to doing so.
- e. A current Franchise holder shall have the right to operate its Cable System in accordance with applicable state or federal law, as may be amended from time to time.

**Section 14.5 Effective Date**

This Cable Ordinance is effective the day after its publication.

Adopted by the City Council of the City of Elk River this 4<sup>th</sup> day of February, 2019.

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John J. Dietz, Mayor

ATTEST:

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Tina Allard, City Clerk