

## CHAPTER 8

### FRANCHISE ORDINANCES

#### Sec. 8.01 ELECTRICAL FRANCHISE ORDINANCE

- Subd. 1. That there is hereby granted unto Interstate Power Company, a Delaware Corporation, its successors and assigns, herein called the "Grantee" the right, permission, privilege, and franchise for a period of twenty-five (25) years from and after the original date of the legal enactment of this ordinance, subject only to the laws of the State of Minnesota, as now in force and to the conditions and limitations hereinafter contained, to erect, install, construct, reconstruct, repair, own, operate, maintain, manage, and control an electric plant and an electric distribution system consisting of poles, wires, conduits, pipes, conductors and other fixtures, within the limits of said City, necessary, convenient, or proper for the production, transmission, distribution and delivery of electric energy to the inhabitants of said City for light, heat and power purposes.
- Subd. 2. That said Grantees, its successors and assigns, is hereby granted the right-of-way, in, under, over, along, and across the street, lanes, avenues, sidewalks, alleys, bridges and public grounds of said City for the purpose of erecting, installing, constructing, reconstructing, repairing, owning, operating, maintaining, managing and controlling said electric plant and said electric distribution system.
- Subd. 3. That said Grantee shall hold said City free and harmless of and from any and all liability, damage, actions and causes of action caused by or through the neglect or mismanagement of the Grantee in the erection, installation, construction, reconstruction, repair, operation, maintenance, management, or control of said electric plant and electric distribution system.
- Subd. 4. That said Grantee shall not, during the erection, installation, construction, reconstruction, repair, operation and maintenance of said plant or distribution system, unnecessarily impede public travel on the streets, lanes, avenues, sidewalks, alleys, bridges, and public grounds of said City, and shall leave all of said streets, lanes, avenues, sidewalks, alleys, bridges, and public grounds upon which it may enter for the purpose herein authorized in as good condition as they were at the date of said entry.
- Subd. 5. That said City by resolution of its governing body, may, upon written demand of any person whose dwelling or place of business located within said City, shall have been wired for electric service, require said Grantee to

extend its said electric distribution system so as to furnish electric energy to said person, provided that said Grantee shall not be required to extend said electric distribution system farther than 150 feet for each such person, who has entered into the customary one year service contract, or, if the extension is longer than 150 feet for each such person or customer, the Grantee shall expend for such extension an amount not greater than three times the estimated annual revenue from such extension, and at the Grantee's option, the customer or customers requesting such longer extension may be required to sign a contract for electric service with said Grantee for a five year period, guaranteeing an annual revenue which will include fixed charges on the additional investment for the extension in excess of 150 feet for each customer.

- Subd. 6. That whenever any person has obtained permission from the City to move any building or structure which may interfere with the poles, wires, or other fixtures of said Grantee, Grantee shall, upon five days notice thereof, and at the expense of the person desiring to move such structure, remove such poles, wires, or other fixtures as may be necessary to allow the passage of such structure, for a reasonable length of time, upon receipt from such person of satisfactory assurance covering the cost of such removal and replacement and any liability or damage resulting therefrom.

Sec. 8.02     NATURAL GAS ORDINANCE

- Subd. 1. That Northern Natural Gas Company, a corporation (operating as PEOPLES NATURAL GAS DIVISION), its lessees, successors and assigns, hereinafter referred to as grantee, be and are hereby granted a non-exclusive authority for a period of twenty-five (25) years, to erect and maintain a gas plant and/or gas system and any and all necessary mains, pipes, services and other appliances thereunto appertaining in, upon, over, across and along the streets, alleys, bridges and public places in the natural gas for heating, industrial and all other uses and purposes in said City.
- Subd. 2. Whenever the grantee, in the construction or maintenance of its system or in the installation of any extension thereto, shall cut into or take up any pavement or shall make any excavation in any street, avenue, alley or public places, within the corporate limits of the City, the same shall be done in a manner so as not to interfere with the use of such thoroughfares by the public. The grantee shall use such safeguards as may be necessary to prevent injury to persons or property during such construction work and upon its completion, all pavement shall be replaced in as good condition as it was before taken up. All excavations shall be refilled and all obstructions shall be removed at the expense of the grantee and to the satisfaction of the grantor. In the event that the grantee shall fail to comply with the provisions of this section, after having been given

reasonable notice, the grantor may do such work as may be needed to properly repair said thoroughfare and the cost thereof shall be repaid to the grantor by the grantee.

- Subd. 3. The grantee in erecting and maintaining said gas distribution system, and in entering and using said streets, highways, avenues, alleys, and public places in said City and in laying its gas equipment, shall not in any manner interfere with or injure any improvement which said City of Trimont, Minnesota now has or may hereafter have upon any of its streets, alleys, highways, or public places.
- Subd. 4. Grantee agrees for and in behalf of itself, its lessees, successors and assigns, that for and during the term and period of this grant, it will maintain in the City of Trimont, Minnesota, an adequate, modern, standard and sufficient gas system and equipment and to maintain and operate the same in a modern and adequate fashion and in a manner adequate to meet the necessities and requirements of the City of Trimont, its industries and inhabitants; provided, however, that Grantee shall not be required to extend its gas distribution system more than 100 feet for each customer to be served from any extension thereof, and provided further, that no obligation shall extend to, or be binding upon the Grantee, to construct or extend its mains or furnish natural gas or gas service within said City if Grantee, is for any reason, unable to obtain delivery of natural gas at or near the corporate limits of said City or an adequate supply thereof to warrant the construction or extension of its mains, for the furnishing of such natural gas or gas service; provided, further, that when the amount of natural gas supplied to Grantee at or near the City limits of said City is insufficient to meet the additional firm requirements of connected or new consumers, Grantee shall have the right to prescribe reasonable rules and regulations for allocating the available supply of natural gas for such additional firm requirements to domestic, commercial and industrial consumers in that order of priority.
- Subd. 5. Grantee agrees for and in behalf of itself, its lessees, successors and assigns that all authority and rights in this ordinance contained, shall at all times be subject to all rights, power and authority now or hereafter possessed by said City of Trimont, Minnesota, to regulate rates, control and direct or otherwise by ordinance or resolution legislate concerning the franchise herein granted and concerning the manner in which grantee shall use the streets, alleys, bridges and public places of said City and concerning the manner in which grantee shall use and enjoy the franchise herein granted.
- Subd. 6. The grantee shall, at all times, maintain an adequate pressure and adequate supply of clean, standard gas of the British Thermal Unit heating value of not less than Nine Hundred (900) British Thermal Units per Cubic Foot of

Gas. Should the British Thermal Units fall below nine hundred (900), the rate then in effect shall be automatically and correspondingly lowered and reduced during any period or periods of time in which such lower British Thermal Unit value shall be furnished.

- Subd. 7. The grantee shall hold the grantor harmless from any and all claims and actions, litigation or damage, arising out of the passage of this Ordinance or of the construction, erection, installation, maintenance or operation of its properties operated by authority of this Ordinance within the corporate limits of the City or the negligence of its employees in the operation thereof, including the Court costs and reasonable attorneys fees in making defense against such claims. A copy of the process served upon the grantor shall be served by the grantor upon the grantee. The grantee shall have the right to defend in the name of the grantor and to employ counsel for such purposes.
- Subd. 8. The grantor shall not be required to extend its gas distribution system more than one hundred (100) feet for each customer to be served from any such extension thereof.
- Subd. 9. If the grantee shall be in default in the performances of any of the terms and conditions of this ordinance and shall continue in default for more than thirty days after receiving notice from the City Council of such default, the City Council may, by ordinance duly passed and adopted, terminate all rights granted under this ordinance to the grantee. The said notice of default shall specify the provision or provisions in the performance of which it is claimed the grantee is in default. Said notice shall be in writing and served in the manner provided by the laws of Minnesota for the service of original notices in civil actions.
- Subd. 10. The right and authority herein granted shall be non-exclusive and shall be and continue for a period of twenty-five (25) years from and after the original date of the legal enactment of this ordinance and the acceptance thereof by the grantee.

#### Section 8.03 – CABLE TELEVISION FRANCHISE ORDINANCE

- Subd. 1. Ter Tel Enterprises, Inc., its successors and assigns, (hereinafter collectively referred to as “grantee”) be and is hereby granted and vested with a renewal of the right, franchise and authority for a period of fifteen years from and after the adoption hereof to acquire, construct, and operate a cable television, or community antenna television system, and to sell and supply to individuals, firms and corporations, public and private, at any and all places, within the corporate limits of the City of Trimont, as said limits are now or hereafter at any time may be established, audio and video

communications services subject to the conditions and restrictions hereinafter provided.

Subd. 2. DEFINITIONS. The following terms, phrases, words and their derivations set forth herein 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.

- A. “Grantor” is the City of Trimont, Minnesota.
- B. “Grantee” is the Ter Tel Enterprises, Inc., an Iowa Corporation, its successors and assigns.
- C. “FCC Rules” are rules of the Federal Communications Commission.
- D. “Franchise Term” is the period consisting of the initial and any renewed term.
- E. “Person” is any person, firm, partnership, association, corporation, company, organization, or entity of any kind whatsoever.

Subd. 3. GENERAL PROVISIONS. The City of Trimont, Minnesota grants to the grantee, subject to the provisions herein, the right to erect, install, construct, reconstruct, replace, repair, maintain and operate in or upon, under, above, across and from the street, avenues, highways, sidewalks, bridges and any other public ways, easements, rights-of-way, and lands as now existing and all extensions thereof and additions thereto, in the City, all equipment, facilities, appurtenances, and apparatus of any nature necessary for the maintenance and operation in the City of a cable television system for the purpose of receiving, amplifying, transmitting, and distributing electrical and electronic energy, pictures, sounds, signals, impulses and communications, unidirectional, and multi-directional of any nature and description, audio and video embracing any and all of the frequencies of the electro magnetic spectrum by studios, camera, projectors, recorders, antennae, transmitters, microwaves, wires, cables, coaxial cables, and wave guides and to otherwise engage in the business, services, and activities generally known as, and practices now in the future, by cable television systems providing audio and video communications and services in accordance with the laws of the State of Minnesota and the United States of America. The right to use and occupy said streets, alleys, public ways and places for the purposes herein set forth shall not be exclusive, and the City reserves the right to grant a similar use of said streets, alleys, public ways and places, to any person at any time during the period of this franchise.

- B. This franchise shall not be exclusive and shall not restrict in any manner the City Council, or other governing body of the City of Trimont in the exercise of any regulatory power which it now has or which it may hereafter be authorized or permitted by the laws of the State of Minnesota.

- C. The Grantee shall at all times during the term of the franchise conform with, submit to, and carry out any and all ordinances relating to any person, firm, or corporation furnishing audio and video communications by cable television to the City or its inhabitants now in force or that may hereafter be enacted.
- D. This franchise may be renegotiated at such times during the term of the franchise as may be mutually agreed upon by the Council and the grantee.

Subd. 4. GRANTEE SERVICE PROVISIONS

- A. Grantee shall, at all times during the term of this franchise, comply in full with Minnesota Cable Communications Board Rule MCCC 121 (c) which regulate Class IV Cable Communications channels. A Class IV Cable Communications channel means a signaling path provided by a cable communications system to transmit signals of any type from a subscriber terminal to another point in the cable communications system. No signals of a Class IV Communications 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, which permission may be revoked at any time by the subscriber without penalty of any kind whatsoever, and shall not be for a period exceeding one year.
- B. Subscriber contracts, if any, and subscriber charges shall not be for a period exceeding twelve months in duration, unless after twelve months the contract may be terminated by the subscriber, at any time at his option, without a penalty to the subscriber, except with entities operated for profit, which may be for periods longer than twelve months. Any change in residential subscriber's service charges are to be approved by the franchising authority in full public proceeding affording reasonable notice and a reasonable opportunity to be heard.
- C. All complaints by grantor and/or subscribers received by the grantee, regarding the quality of Grantee's cable television service, equipment malfunction, billing disputes, and any other matters relative to its cable television system, shall be investigated by Grantee within twenty-four (24) hours of receipt of written notice to said Grantee, duly setting forth the complaint. Should the grantee determine the complaint is valid, it shall, if reasonably possible, use its best efforts to satisfy the complaint within seventy-two (72) hours. If the complaint is not resolved within 72 hours, the complainant may bring the matter to the Grantor for action as provided under this franchise.
- D. Grantee shall maintain a long distance toll free telephone number or shall

accept collect calls, all for the reception of complaints. Further, Grantee shall maintain a repair service capable of responding to subscriber complaints and requests for service within 24 hours after receipt of the complaint or request.

Whenever it is necessary to shut off or interrupt services for the purpose of making repairs, adjustments or installation, Grantee shall do so during the periods of minimum use of the system by subscribers.

Unless such interruption described above is unforeseen and immediately necessary, Grantee shall give reasonable notice thereof to the subscribers affected.

All costs incurred in making such repairs, adjustment or installations to Grantee's cable television system serving subscriber, shall be born by Grantee, unless otherwise provided for in the subscriber contract.

E.

1. Grantee shall, to the extent of the systems available channel capacity, provide to each of its subscribers who receive all, or any part of, the total services offered on the system, reception on at least one specially designated non-commercial public access channel available for use by the general public on a first come, non-discriminatory basis no charges shall be made for channel time or play hack of prerecorded programming on the specially designated non-commercial public access channel required by this subdivision. Provided, however, that personnel, equipment, and production costs may be assessed for live studio presentations exceeding five minutes in length. Charges for such production costs and any fees for use of the public access channel shall be consistent with the goal of affording the public a low cost means of television access. It is further provided that Grantees shall not be required to maintain or provide a studio for the above presentations, however, Grantee agrees to make available a camera and VCR.
2. Consistent with FCC Rules, Grantee shall establish rules pertaining to the administration and usage of the access channel by the general public, education, authorities, government and leases.

F.

Grantee shall make readily available for public use at least the minimal equipment necessary for the production of programming and play back of prerecorded programs for the public access channel. The Grantee shall also make readily available, upon need being shown, the minimum equipment necessary to make it possible to record programs at remote locations with battery operated portable equipment.

- G. Grantee shall construct and maintain a cable communications system having the technical capacity for non-voice return communications which, for purposes of this requirement, shall mean the provision of an appropriate system design techniques with the installation of cable and amplifiers suitable for the subsequent insertion of necessary non-voice communications electronic modules.
  
- H. Grantor and Grantee will conform to all Federal and State laws, rules and regulations regarding the cable communications. Provided, parties acknowledge that the Grantor has by resolution exempted the cable communications system serving the City of Trimont from any and all provisions of Chapter 238 of Minnesota Statutes regarding the regulation of cable communications. Grantees compliance of all federal and state laws, rules and regulations regarding cable communications shall not require it to comply with rules of the Minnesota Cable Communications Board. Any amendment of FCC rules modifying the provisions of said franchise shall be incorporated by reference into this franchise within one year after the adoption of the admendment, or at the time of the renewal of this franchise, whichever occurs first. Where a conflict exists between Federal and State laws, rules and regulations, Grantor and Grantee will conform to Federal laws, rules and regulations where the Federal rules and laws have preempted the State laws, rules and regulations. Otherwise, Grantor and Grantee will confirm to the State laws and regulations.
  
- I. The operational standards by which Grantee shall install and maintain the cable communication system shall at all times meet or exceed the minimum technical standard provided under the FCC Rules, Subpart K of Section 76 as it applies to cable television systems, as they may be modified from time to time.
  - (1) The system shall deliver to the subscriber's terminal a signal that is capable of producing a black and white or colored picture without visual material degradation in quality within the limitations imposed by the technical state of the art.
  
  - (2) The system shall transmit or distribute signals without causing objectionable cross-modulation in the cables or interfacing with other electrical electronic networks or with the reception of other television or radio receivers in the area not connected to the network.

Subd. 5. PERFORMANCE PROVISIONS.

- A. Grantee shall defend, at its expense, any action brought against the City and its political subdivisions by reason of the erection, construction,



replacement, removal, maintenance and operation of Grantee's cable television system. Grantee shall also carry workmen's compensation insurance coverage on its employees who are engaged in any manner of that erection, construction, replacement, repair, maintenance, and operation of the Grantee's plant and equipment. Grantee shall be notified of any claim, demand or action brought against the City or its political subdivisions for which the City or its political subdivisions may seek reimbursement or defense as provided hereunder and the City or its political subdivisions shall not settle, capitulate, or admit any such claim, demand or action without the consent of the Grantee.

- B. Grantee shall indemnify and hold harmless Grantor, its officers, agents and employees at all times during the term of the franchise with respect to all damages and penalties Grantor, its officers, agents or employees may legally be required to pay as a result of the exercise of the franchise and shall maintain throughout the term of the franchise liability insurance therefore in an amount not less than \$300,000 for bodily injury or death to one person and \$500,000 for bodily or death resulting from any one occurrence.
- C. Grantee shall indemnify and hold harmless Grantor, its officers, agents and employees at all times during the terms of this franchise with respect to property damage which it may legally be required to pay as a result of the exercise of the franchise and Grantee shall maintain through the term of the franchise insurance for property damage of not less than \$100,000 for any one accident.
- D. A certificate of the above insurance coverage shall be provided to the City, together with evidence of payment of the required premium upon request of the City during the term of this franchise.

Subd. 6. MISCELLANEOUS PROVISIONS.

- A. Grantor shall have the authority to audit Grantee's accounting and financial records upon reasonable notice, and the Grantee shall file with the Grantor annually, reports of gross subscriber revenues and other information as Grantor deems appropriate.
- B. Grantee shall not transfer the franchise of ownership except upon prior approval of the grantor, which approval shall not be unreasonably withheld, save and except Grantee may pledge or mortgage the franchise or its stock to lending institutions for the purpose of securing financing for the Grantee or its parent, subsidiary or affiliate without consent.
- C. Upon termination or forfeiture of the franchise, Grantee shall upon written request of Grantor and within a reasonable time, remove its cable, wire

and all other appliances relating to the cable television system for the streets, alleys and other public places within the municipal boundaries of the Grantor. If Grantee refuses or fails to do so, Grantor shall cause said facilities to be removed by low bidder as reasonably soon as possible and invoice the Grantee for the actual cost of removal. Should Grantee fail or refuse to make prompt payment, then Grantor may institute a proper legal action for the recovery of any monies owed under this provision by Grantee, plus reasonable costs and attorneys fees incurred therein.

- D. Upon expiration of the franchise term, or upon revocation of the franchise, or upon other termination of the franchise as provided for in this agreement, or upon receipt of an application for approval of any assignment of the franchise to a part not affiliated with, owned or controlled by Grantee, Grantor shall have a non-exclusive right to purchase the system. The Grantors “non-exclusive right to purchase the system” shall mean that the Grantor shall be notified if the system is to be sold and shall be given a non-exclusive right to negotiate with the Grantee for the purchase of the system but that the non-exclusive right to purchase the system does not include Grantees obligation to sell to the Grantor except if Grantors offer is accepted by the Grantee. This provision does not accrue any interest by Grantor in Grantee’s property and does not apply to any assignment, pledge or mortgage of the franchise for borrowing and financing purposes, or assignments to a party affiliated with, owned or controlled by the Grantee. The failure of Grantee to elect to sell to grantor shall not be just cause to deprive Grantee of its right to transfer under Section 2 herein.
- E. When it has been found that Grantee has substantially violated (1) any provision of this franchise, or (2) attempted to evade any of the provisions of the franchise ordinance or (3) practiced any fraud or deceit upon the Grantor, said Grantor shall have the right to terminate and cancel the franchise and all rights and privileges included therein. Conditions or circumstances for Grantor’s termination of the franchise shall include, but not necessarily be limited to the following:
- (a) Grantee’s default in the performance of any of its obligations under the franchise and failure to act on the default within thirty (30) days after receiving written notice of the default from the Grantor: or,
  - (b) If a petition is filed by the Grantee under the bankruptcy act; or any other insolvency or creditor’s rights, laws, state or federal, or the Grantee is adjudged a bankrupt insolvent under any insolvency or creditor’s rights, laws, state or federal.
- F. When the provisions of Section 5 have been violated, Grantor shall provide the Grantee with a written notice of the cause for termination and

its intention to terminate the franchise and shall allow Grantee a minimum of thirty (30) days subsequent to receipt of the notice in which to correct the violation.

Grantee shall be provided with an opportunity to be heard at a public hearing before the governing body of the Grantor prior to termination of the franchise. If the Grantor determines to terminate the franchise, Grantee shall have a period of thirty (30) days beginning the next day following the date of the conclusion of the public hearing at which the termination of the franchise is considered, within which to file an appeal to the Minnesota Cable Communications Board, pursuant to Minnesota Statutes, Section 238.14. Further, if the Minnesota Cable Communications Board refuses to take jurisdiction, said appeal may be made directly to the District Court of Martin County, Minnesota. During such thirty day period and until the Board or Court determines the appeal, if an appeal is taken, the franchise shall remain in full force and effect unless the term thereof expires sooner. If the Board or Court approves of the action of Grantor, the franchise shall terminate when the Board Order or Court Order becomes final. If the Board or Court disapproves of the action of the Grantor, the franchise shall, until the Board Order or Court Order becomes final, remain in full force and effect, and once the Order becomes final, the franchise shall remain in full force and effect during the term thereof unless terminated sooner in accordance with law. Any such appeal to the Board or, the Court shall be determined to be a contested case to which the Board shall not be a party.

- G. When the franchise becomes effective and at all times thereafter, until the Grantee has liquidated all of its obligations with Grantor, Grantee shall furnish a bond to the Grantor in the amount of \$5,000. in such form and with such sureties as shall be acceptable to Grantor conditioned upon the faithful performance of Grantee according to the terms of the franchise and upon the further condition that if Grantee shall fail to comply with any law, ordinance or regulation governing the franchise, there shall be recoverable, jointly and severally, from the principal and surety on the bond any damages or loss suffered by Grantor as a result, including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of grantee, plus a reasonable allowance for attorneys fees and costs, up to the full amount of the bond, and with said bond further guaranteeing payments by Grantee of claims, liens and taxes due Grantor which arise by reason of the construction, operation, or maintenance of the cable communication system. The rights reserved by Grantor with respect to the bond are in addition to all other rights Grantor may have under the franchise or any other law. Grantor may, from year to year, in its sole discretion, reduce the amount of the bond.

- H. Grantee shall not open or disturb the surface of any street, sidewalk, driveway or public place for any purpose without first having obtained a permit, if required to do so from the proper municipal authority, for which permit Grantor may impose the usual and customary reasonable fees to be paid by the Grantee. The lines, conduits, cables and other property placed in the streets, or portions of the streets and public places shall be as determined by the proper municipal authority. Grantee shall, upon completion of any work requiring an opening of any street or public place, restore the same, including the paving and its foundations to as good a condition as formerly and in a manner and quality approved by the proper municipal authority. Such work shall be performed with due diligence, and if Grantee shall fail to perform the work promptly, to remove all dirt and rubbish and to put the street or public place back in good condition, Grantor shall have the right to put the street or public place back to good condition at the expense of the Grantee and Grantee shall, upon demand, pay to Grantor the cost of such work done or performed by Grantor.
- I. All wires, conduits, cables and other property and facilities of the Grantee shall be so located, constructed, installed and maintained as not to endanger or unnecessarily interfere with the usual and customary trade, traffic and travel upon the streets and public places within the area of Grantee herein. Grantee shall keep and maintain its property in good condition, order and repair, so that the same shall have the right to inspect and examine at any reasonable notice to property owned or used, in part or in whole by Grantee. Grantee shall keep accurate maps and records of all of its facilities and furnish copies of such maps and records as requested by Grantor.
- J. All wires, cables, amplifiers and other property of Grantee, subject to applicable local laws, shall be constructed and installed in an orderly and workmanlike manner. All cables and wires shall be installed in parallel with existing telephone and electric wires, whenever possible. Multiple cable configurations shall be arranged in parallel and bundles, with due respect for engineering considerations.
- K. All construction, installation, maintenance and operation of the cable communication system or any facilities employed in connection therewith, subject to applicable local law, shall be in compliance therewith, subject to applicable local law, shall be in compliance with the provisions of the National Electrical Safety Code as prepared by the National Bureau of Standards, the National Electrical Code as prepared by the National Board Fire Underwriters, Bell Telephone System Code of Pole Line Construction, and standards issued by the Federal Communications Commission or other federal or state regulatory agencies in relation thereto, and local zoning regulations. The cable communication system should be installed, constructed, maintained and operated so as not to

endanger or interfere with the safety of persons or property.

- L. When Grantor shall undertake any public improvement which affects cable communications equipment, it shall with regard to reasonable working conditions, direct Grantee to remove or relocate its wire, conduits, cable and other property located in said street, right-of-way, or public place. Grantor shall give Grantee reasonable notice of the undertaking of public improvements, which affect the Grantee's cable communications equipment.
- M. Nothing contained in the franchise shall relieve any person from liability arising out of the failure to exercise reasonable care to avoid injuring Grantee's facilities while performing any work connected with grading, regarding, or changing the line of any street or public place, or with the construction or reconstruction of any sewer or water system.
- N. An advisory body shall be appointed by the governing body of the Grantor to monitor the performance of the Grantee in executing the provisions of the franchise.
  - (1) The advisory body shall submit an annual report to Grantor, to the cable communication system operator assessing Grantee's performance according to the terms of the franchise and make recommendations to the Grantor regarding the apparent or likely need for upgrading the system to meet current state of the art.
  - (2) Six (6) months prior to the expiration of the franchise and to the expiration of a certificate of confirmation, the advisory board shall submit a report to the Grantor, which report shall include a written appraisal of the performance of the Grantee over the entire length of the franchise with regard to the provisions of the franchise. The report shall also include recommendations for revised or additional provisions of the franchise, considering at least the following items as they may apply to the Grantee under the FCC Rules:
    - (a) Channel Capacity; Channels for Access Cable casting, facility and staff assistance available for access cable casting; 2-way capability, and the need for further service to be extended within the franchised area based upon a reassessment of the communications needs of Grantor in relation to the service generally offered by the cable industry. A copy of the report shall be sent, within ten (10) days of its submission to the franchising authority and to the cable's system operator.

- O. Grantor shall appoint a member having a title of Cable Commission System Administrator, who shall be responsible for the continuing administration of the franchise. The member will be the City Clerk for the City of Trimont.
- P. Grantee shall follow as minimum standards, those technical standards promulgated by the Federal Communications Commission and incorporated herein by reference relating to cable communications systems contained in Subpart K of Section 76 of the FCC Rules and Regulations relating to cable communications systems, as the same now provide and may hereafter be amended or modified from time to time. The results of any tests required by the Federal Communications Commission shall be filed within ten (10) days of the conduct of such tests with the franchising authority.
- Q. Grantee, its successors or assigns, notwithstanding any provision in the franchise, may not abandon any cable communications service or any portion thereof without having given three (3) months prior written notice to the franchising authority. No cable communications company may abandon any cable communications service or any portion thereof without compensating the Grantor for damages resulting to it from such abandonment.
- R. The franchise and every extension or renewal of such franchise shall be either accepted or rejected in writing by Grantee within thirty (30) days after its passage by the Grantor. No franchise shall be binding upon Grantor until said franchise has been accepted by Grantee, and such acceptance shall be construed to be an acceptance of, and consent to, all terms, conditions and limitations contained in the ordinance granting the franchise.

Subd. 7. TESTING

- A. Should the Grantor require or request any technical testing of the cable television system over and above that normally required by the FCC, the Grantor shall pay the cost for said special technical testing. Should the special technical testing report show that the Grantee's cable television system does not meet those technical standards required of the system by the FCC, then, and in that event, Grantee shall pay the cost of the testing expense.

Subd. 8. EMERGENCY USE OF FACILITIES.

- A. The Grantee shall, on the request of the City Council, make its community cable television system facilities available to the City for use during any emergency or disaster period.

Subd. 9. NEW DEVELOPMENTS.

- A. It shall be the policy of the City to liberally amend this franchise, upon application of the Grantee, when necessary to enable the Grantee to take advantage of any developments in the field of transmission of television and communication signals which will allow Grantee an opportunity to more effectively, efficiently, or economically serve its customers. Provided, however, that this action shall not be construed to require the City to make any such amendment.

It shall be the policy of the Grantee to the extent economically feasible, to continually update and improve its system and to offer additional services during the term of the franchise, so as to provide reasonable “state of the art” service to the users.

Subd. 10. FRANCHISE AND UTILITY FEES.

- A. On each anniversary date of the placing of the system in operation, the grantees shall pay to the City a franchise fee equal to three (3) percent of the basic monthly charges as computed on an annual basis. Said payment shall be for utilization of the public rights-of-way and for the City’s regular involvement with the Grantee and its installation and maintenance crews. No other fees shall be charged or imposed by the City upon the Grantee.
- B. Said fee shall be based upon Grantee’s annual gross receipts taken in and received by the Grantee for the basic monthly service within each year. It is expressly understood that the City will not receive any payment for gross receipts taken in by the Grantee for connection charges, reconnect charges, charges for premium channels or other sources included, but not limited to rents, advertising, or special services.