

## CHAPTER 11. PUBLIC UTILITIES

### Part 1. Gas Franchise

#### 1101.01 **DEFINITIONS** (5-2012-entire section 1101)

For the purposes of this Ordinance, the following capitalized terms in alphabetical order shall have the following meanings:

**Subd. 1. City.** The City of Shafer, County of Chisago, State of Minnesota.

**Subd. 2. City Utility System.** Facilities used for providing non-energy related public utility service owned or operated by City or agency thereof, including sewer and water service, but excluding facilities for providing heating, lighting or other forms of energy.

**Subd. 3. Commission.** The Minnesota Public Utilities Commission, or any successor agency or agencies, including an agency of the federal government, which preempts all, or part of the authority to regulate Gas retail rates now vested in the Minnesota Public Utilities Commission.

**Subd. 4. Company.** Northern States Power Company, a Minnesota corporation, d/b/a/ Xcel Energy and its successors and assigns.

**Subd. 5. Gas.** “Gas as used herein shall be held to include natural gas, manufactured gas, or other form of gaseous energy.

**Subd. 6. Gas Facilities.** Pipe, mains, regulators, and other facilities owned or operated by Company for the purpose of providing gas service for public use.

**Subd 7. Notice.** A written notice served by one party on the other party referencing one or more provisions of this Ordinance. Notice to Company shall be mailed to the General Counsel, 414 Nicollet Mall, 5<sup>th</sup> Floor, Minneapolis, MN 55401. Notice to City shall be mailed to the City Clerk, 17656 303<sup>rd</sup> Street, Shafer, MN 55074. Either party may change its respective address for the purpose of this Ordinance by written notice to the other party.

**Subd. 8. Public grounds.** Land owned by the City for park, open space or similar purpose which is held for use in common by the public.

**Subd. 9. Public way.** Means streets, avenues, alleys, parkways, walkways, and other public rights of way within the city.

**ADOPTION OF FRANCHISE**

Subd. 1 Grant of Franchise. City hereby grants Company, for a period of 20 years from the date passed and approved by the City, the right to transmit and furnish Gas for energy for light, heat, power and other purposes public and private use within and through the limits of City as its boundaries now exist or as they may be extended in the future. For these purposes, Company may construct, operate, repair and maintain Gas Facilities in, on, over under and across the Public Grounds and Public Ways of City, subject to the provisions of this Ordinance. Company may do all reasonable things necessary or customary to accomplish these purposes, subject, however, to such reasonable regulations as may be imposed by the City pursuant to ordinance and to the further provisions of this franchise agreement.

Subd. 2 Effective Date; Written Acceptance. This franchise agreement shall be in force and effect from and after passage of this Ordinance, its acceptance by Company, and its publication as required by law. The City Council resolution may revoke this franchise agreement if Company does not file a written acceptance with the City within 90 days after publication.

Subd. 3 Service and Rates. The service to be provided and the rates to be charged by Company for Gas service in City are subject to the jurisdiction of the Commission.

Subd. 4 Publication Expense. The expense of publication of this Ordinance will be paid by City and reimbursed by Company.

Subd. 5 Dispute Resolution. If either party asserts that the other party is in default in the performance of any obligation, hereunder, the complaining party shall notify the other party of the default and desired remedy. The notification shall be written. Representatives of the parties must promptly meet and attempt in good faith to negotiate a resolution of the dispute. If the dispute is not resolved within 30 days of the written notice, the parties may jointly select a mediator to facilitate further discussion. The parties will equally share the fees and expenses of this mediator. If a mediator is not used or if the parties are unable to resolve the dispute within 30 days after first meeting with the selected mediator, either party may commence an action in District Court to interpret and enforce this franchise or for such other relief as may be permitted by law or equity for breach of contract, or either party may take any other action permitted by law.

**LOCATION, OTHER REGULATIONS**

Subd. 1 Location of Facilities. Gas Facilities shall be located, constructed and maintained so as not to interfere with the safety and convenience of ordinary travel along and over Public Ways and so as not to disrupt normal operation of any City Utility System previously installed therein. Gas Facilities shall be

located on Public Grounds as determined by the City. Company's construction, reconstruction, operation, repair, maintenance and location of Gas Facilities shall be subject to permits if required by separate ordinance and to other reasonable regulations of the City to the extent not inconsistent with the terms of this franchise agreement. Company may abandon underground gas facilities in place, provided, at City's request, Company will remove abandoned metal pipe interfering with a City improvement project, but only to the extent such metal pipe is uncovered by excavation as part of the City's improvement project.

Subd. 2 Field Locations. Company shall provide field locations for its underground Gas Facilities within City consistent with the requirements of Minnesota Statutes, Chapter 216D.

Subd. 3 Street Openings. Company shall not open or disturb any Public Ground or Public Way for any purpose without first having obtained a permit from the City, if required by a separate ordinance, for which the City may impose a reasonable fee. Permit conditions imposed on Company shall not be more burdensome than those imposed on other utilities for similar facilities or work. Company may, however, open and disturb any Public Ground or Public Way without permission from the City where an emergency exists requiring the immediate repair of Gas Facilities. In such event Company shall notify City by telephone to the office designated by the City as soon as practicable. Not later than the second working day thereafter, Company shall obtain any required permits and pay any required fees.

Subd. 4 Restoration. After undertaking any work requiring the opening of any Public Ground or Public Way, Company shall restore the same, including paving and its foundation, to as good a condition as formerly existed, and shall maintain nay paved surface in good condition for two years thereafter. The work shall be completed as promptly as weather permits, and if Company shall not promptly perform and complete the work, remove all dirt, rubbish, equipment and material, and put the Public Ground or Public Way in the said condition, the City shall have, after demand to Company to cure and the passage of a reasonable period of time following the demand, but not to exceed five days, the right to make the restoration at the expense of the Company. Company shall pay the City the cost of such work done for or performed by the City. This remedy shall be in addition to any other remedy available to the City for noncompliance with this Section 3.4, but the City hereby waives any requirement for Company to post a construction performance bond, certificate of insurance, letter of credit or any other form of security or assurance that may be required, under a separate existing or future ordinance of the City, of a person or entity obtaining the City's permission to install, replace or maintain facilities in a Public Way.

Subd. 5 Avoid Damage to Gas Facility. Nothing in this Ordinance relieves any person from liability arising out of the failure to exercise reasonable care to avoid damaging Gas Facilities while performing any activity.

Subd. 6 Notice of Improvements. The City must give Company reasonable notice of plans for improvements to Public Grounds or Public Ways where the City has reason to believe that Gas Facilities may affect or be affected by the improvements. The notice must contain: (i) the nature and character of the improvements, (ii) the Public Grounds and Public Ways upon which the improvements are to be made, (iii) the extent of the improvements, (iv) the time when the City will start the work, and (v) if more than on Public Ground or Public Way is involved, the order in which the work is to proceed. The notice must be given to Company a sufficient length of time in advance of the actual commencement of the work to permit Company to make necessary additions, alterations to repairs to its Gas Facilities.

1101.04

## **RELOCATIONS**

Subd. 1. Relocation of Gas Facilities in Public Ways. If the City determines to vacate a Public Way for a City improvement project, or at City's cost to grade, regrade, or change the line of any Public Way, or construct or reconstruct any City Utility System in any Public Way, it may order Company to relocate its Gas Facilities located therein if relocation is reasonably necessary to accomplish the City's proposed public improvement. Except as provided in Section 1104.04 Subd. 4, Company shall relocate its Gas Facilities at its own expense. The City shall give Company reasonable notice of plans to vacate for a City improvement project, or to grade, regrade or change the line of any Public Way or to construct or reconstruct any City Utility System. If a relocation is ordered within 5 years of a prior relocation of the same Gas Facilities, which was made at Company expense, the City shall reimburse Company for Non-Betterment costs on a time and material basis, provided, that if a subsequent relocation is required because of the extension of a City Utility System to a previously unserved area, Company may be required to make the subsequent relocation at its expense. Nothing in this Ordinance requires Company to relocate, remove, replace or construct at its own expense its Gas Facilities where such relocation, removal, replacement or reconstruction is solely for the convenience of the City and is not reasonably necessary for the construction or reconstruction of a Public Way or City Utility System or other City improvement.

Subd. 2. Relocation of Gas Facilities in Public Ground. City may require Company at Company's expense to relocate or remove its Gas Facilities from Public Ground upon a finding by City that Gas Facilities have become or will become a substantial impairment to the existing or proposed public use of the Public Ground.

Subd. 3. Projects with Federal Funding. City shall not order Company to remove or relocate its Gas Facilities when a Public Way is vacated, improved or realigned for a right-of-way project or any other project which is financially subsidized in whole or in part by the Federal Government or any agency thereof, unless the reasonable non-betterment costs of such relocation are first paid to Company.

The City is obligated to pay Company only for those portions of its relocation costs for which City has received federal funding specifically allocated for relocation costs in the amount requested by the Company, which allocated funding the City shall specifically request. Relocation, removal or rearrangement of any Company Gas Facilities made necessary because of a federally aided highway project shall be governed by the provisions of Minnesota Statutes, Section 161.45, as supplemented or amended. It is understood that the rights herein granted to Company are valuable rights.

Subd. 4. No Waiver. The provisions of this franchise apply only to facilities constructed in reliance on a franchise from the City and shall not be construed to waive or modify any rights obtained by Company for installations within a Company right-of-way acquired by easement or prescriptive right before the applicable Public Ground or Public Way was established, or Company's rights under state or county permit.

1101.05

**TREE TRIMMING**

Company is also granted the permission and authority to trim all shrubs and trees, including roots, in the Public Ways of City to the extent Company finds necessary to avoid interference with the proper construction, operation repair and maintenance of Gas Facilities, provided that Company shall save City harmless from any liability in the premises.

1101.06

**INDEMNIFICATION**

Subd. 1 Indemnity of City. Company shall indemnify, keep, and hold the City free and harmless from any and all liability on account of injury to persons or damage to property occasioned by the construction, maintenance, repair, inspection the issuance of permits, or the operation of Gas Facilities located in Public Grounds and Public Ways. The City shall not be indemnified for losses or claims occasioned through its own negligence except for losses or claims arising out of or alleging the City's negligence as to the issuance of permits, or inspection of, Company's plans or work. The City shall not be indemnified of the injury or damage results from the performance in a proper manner of acts reasonably deemed hazardous by Company, and such performance is nevertheless orders or directed by City after notice of Company's determination.

Subd. 2 Defense of City. In the event a suit is brought against the City under circumstances where this agreement to indemnify applies, Company at its sole cost and expense shall defend the City in such suit if written notice is promptly given to Company within a period wherein Company is not prejudiced by lack of such notice. If Company is required to indemnify and defend, it will thereafter have control of such litigation, but Company may not settle such litigation without the consent of the City, which consent shall not be unreasonably

withheld. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the City and Company, in defending any action on behalf of the City shall be entitled to assert in any action every defense or immunity that the City could assert in its own behalf.

1101.07      **VACATION OF PUBLIC WAYS**

The City shall give the Company at least two weeks prior notice of a proposed vacation of a Public Way. Except where required for a City improvement project, the vacation of any Public Way, after the installation of Gas Facilities, shall not operate to deprive Company of its rights to operate and maintain such Gas Facilities, until the reasonable cost of relocating the same and the loss and expense resulting from such relocation are first paid to Company. In no case, however, shall City be liable to Company for failure to specifically preserve a right-of-way under Minnesota Statutes, Section 160.29.

1101.08      **CHANGE IN FORM OF GOVERNMENT**

Any change in the form of government of the City shall not affect the validity of this Ordinance. Any governmental unit succeeding the City shall, without the consent of Company, succeed to all the rights and obligations of the City provided in this Ordinance.

1101.09      **PROVISIONS OF ORDINANCE**

Subd. 1 Severability. Every section, provision, or part of this Ordinance is declared separate from every other section, provision, or part and if any section, provision, or part shall be held invalid, it shall not affect any other section, provision, or part. Where a provision of any other City ordinance conflicts with the provisions of this Ordinance, the provisions of this Ordinance shall prevail.

Subd. 2 Limitation on Applicability. This Ordinance constitutes a franchise agreement between the City and Company as the only parties and provision of this franchise shall in anyway inure to the benefit of any third person (including the public at large) so as to constitute any such person as a third party beneficiary of the agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.

1101.10      **AMENDMENT PROCEDURE**

Either party to this franchise agreement may at any time propose that the agreement be amended to address a subject of concern and the other party will consider whether it agrees that the amendment is mutually appropriate. If an amendment is agreed upon, this Ordinance may be amended at any time by the City passing a subsequent ordinance declaring the provisions of the amendment,

which amendatory ordinance shall become effective upon the filing of Company's written consent thereto with the City Clerk within 90 days after the date of final passage by the City of the amendatory ordinance.

1101.11

**PREVIOUS FRANCHISES SUPERSEDED**

This franchise supersedes any previous Gas Franchise granted to Company or its predecessor.

## Part 2. Electrical Service

### 1102.01 DEFINITIONS (4-2007-entire section 1102)

**City.** The City of Shafer, County of Chisago, State of Minnesota.

**City Utility System.** Facilities used for providing non-energy related public utility service owned or operated by City or agency thereof, including sewer and water service, but excluding facilities for providing heating, lighting or other forms of energy.

**Commission.** The Minnesota Public Utilities Commission, or any successor agency or agencies, including an agency of the federal government which preempts all or part of the authority to regulate electric rates now vested in the Minnesota Public Utilities Commission.

**Company.** Northern States Power Company, a Minnesota corporation, d/b/a Xcel Energy and its successors and assigns.

**Electric Facilities.** Electric transmission and distribution towers, poles, lines, guys, anchors, conduits, fixtures, and necessary appurtenances owned or operated by Company for the purpose of providing electric energy for public use.

**Notice.** A writing notice served by one party on any other party referencing one or more provisions of this Ordinance. Notice to Company shall be mailed to the General Counsel, Suite 3000, 800 Nicollet Mall, Minneapolis, MN 55402. Notice to City shall be mailed to the Clerk, 17656 303<sup>rd</sup> Street, Shafer, MN 55074. Either party may change its respective address for the purpose of this Ordinance by written notice to the other party.

**Public grounds.** Land owned by the City for park, open space or similar purpose, which is held for use in common by the public.

**Public way.** Means streets, avenues, alleys, parkways, walkways and other public rights of way within the City.

### 1102.02 ADOPTION OF FRANCHISE

2.1 Grant of Franchise. City hereby grants Company, for a period of 20 years from the date passed (4-17-2007) and approved by the City, the right to transmit and furnish electric energy for light, heat, power and other purposes for public and private use within and through the limits of City as its boundaries now exist or as they may be extended in the future. For these purposes, Company may do all reasonable things necessary or customary to accomplish these purposes,



subject, however, to such reasonable regulations as may be imposed by the City pursuant to ordinance and to the further provisions of this franchise agreement.

2.2 Effective Date: Written Acceptance. This franchise agreement shall be in force and effect from after passage of this Ordinance, its acceptance by Company, and its publication as required by law. The City Council resolution may revoke this franchise agreement if Company does not file a written acceptance with the City within 90 days after publication.

2.3 Service and Rates. The service to be provided and the rates to be charged by Company for electric service in City are subject to the jurisdiction of the Commission. The area within the City, in which Company may provide electric service is subject to the provisions of Minnesota Statutes, Section 216B.40.

2.4 Publication Expense. The expense of publication of this ordinance will be paid by City and reimbursed to City by Company.

2.5 Dispute Resolution. If either party asserts that the other party is in default in the performance of any obligation hereunder, the complaining party shall notify the other party of the default and the desired remedy. The notification shall be written. Representatives of the parties must promptly meet and attempt in good faith to negotiate a resolution of the dispute. If the dispute is not resolved within 30 days of the written notice, the parties may jointly select a mediator to facilitate further discussion. The parties will equally share the fees and expenses of this mediator. If a mediator is not used or if the parties are unable to resolve the dispute within 30 days after first meeting with the selected mediator, either party may commence an action in District Court to interpret and enforce this franchise or for such other relief as may be permitted by law or equity for breach of contract, or either party may take other action permitted by law.

1102.03

## **LOCATION, OTHER REGULATIONS**

3.1 Location of Facilities. Electric Facilities shall be located, constructed and maintained so as not to interfere with the safety and convenience of ordinary travel along and over Public Ways and so as not to disrupt normal operation of any City Utility System previously installed therein. Electric Facilities shall be located on Public Grounds as determined by the City. Company's construction, reconstruction, operation, repair, maintenance and location of Electric Facilities shall be subject to permits if required by separate ordinance and to other reasonable regulations of the City to the extent not inconsistent with the terms of this franchise agreement. Company may abandon underground Electric Facilities in place, provided at the City's request, Company will remove abandoned metal or concrete encased conduit interfering with a City improvement project, but only to the extent such conduit is uncovered by excavation as part of the City improvement project

3.2 Field Locations. Company shall provide field locations for all its underground Electric Facilities within City consistent with the requirements of Minnesota Statutes, Chapter 216D.

3.3 Street Openings. Company shall not open or disturb any Public Way or Public Ground for any purpose without first having obtained a permit from the City, if required by a separate ordinance, for which the City may impose a reasonable fee. Permit conditions imposed on Company shall not be more burdensome than those imposed on other utilities for similar facilities or work. Company may, however, open and disturb any Public Way or Public Ground without permission from the City where and emergency exists requiring the immediate repair of Electric Facilities. In such event, Company shall notify the City by telephone to the office designated by the City as soon as practicable. Not later than the second working day thereafter, Company shall obtain any required permits and pay any required fees.

3.4 Restoration. After undertaking any work requiring the opening of any Public Way or Public Ground, Company shall restore the same, including paving and its foundation, to as good a condition as formerly existed, and shall maintain any paved surface in good condition for two years thereafter. The work shall be completed as promptly as weather permits, and if Company shall not promptly perform and complete the work, remove all dirt, rubbish, equipment and material, and put the Public Way or Public Ground in the said condition, the City shall have, after demand to Company to cure and the passage of a reasonable period of time following the demand, but not to exceed five days, the right to make the restoration at the expense of Company. Company shall pay to the City the cost of such work done for or performed by the City. This remedy shall be in addition to any other remedy available to the City for noncompliance with Section 3.4, but the City hereby waives any requirement for Company to post a construction performance bond, certificate of insurance, letter of credit or any other form of security or assurance that may be required under a separate existing or future ordinance of the City, of a person or entity obtaining the City's permission to install, replace or maintain facilities in a Public Way.

3.5 Avoid Damage to Electric Facilities. Nothing in this Ordinance relieves any person from liability arising out of the failure to exercise reasonable care to avoid damaging Electric Facilities while performing any activity.

3.6 Notice of Improvements. The City must give Company reasonable notice of plans for improvements to Public Ways or Public Ground where the City has reason to believe that Electric Facilities may affect or be affected by the improvement. The notice must contain: (i) the nature and character of the improvements, (ii) the Public Ways and Public Grounds upon which the improvements are to be made, (iii) the extent of the improvements, (iv) the time when the City will start the work, and (v) if more than one public Way or Public Ground is involved, the order in which the work is to proceed. The notice must

be given to Company a sufficient length of time in advance of the actual commencement of the work to permit Company to make any necessary additions, alterations or repairs to its Electric Facilities.

3.7 Shared Use of Poles. Company shall make space available on its poles or towers for City fire, water utility, police or other City facilities whenever such use will not interfere with the use of such poles or towers by Company, by another electric utility, by a telephone utility, or by any cable television company or other form of Communication Company. In addition, the City shall pay for any added cost incurred by Company because of such use by City.

1102.04

## **RELOCATIONS**

4.1 Relocation of Electric Facilities in Public Ways. If the City determines to vacate a Public Way for a City improvement project, or at City's cost to grade, regrade, or change the line of any Public Way, or construct or reconstruct any City Utility System in any Public Way, it may order Company to relocate its Electrical Facilities located therein if relocation is reasonably necessary to accomplish the City's proposed public improvement. Except as provided in Section 4.3, Company shall relocate its Electric Facilities at its own expense. The City shall give Company reasonable notice of plans to vacate for a City improvement project, or to grade, regrade, or change the line of any Public Way or to construct or reconstruct any City Utility System. If a relocation is ordered within five years of a prior relocation of the same Electric Facilities, which was made at Company expense, the City shall reimburse Company for non-betterment costs on a time and material basis, provided that if a subsequent relocation is required because of the extension of a City Utility System to a previously unserved area, Company may be required to make the subsequent relocation at its expense. Nothing in this Ordinance requires Company to relocate remove, replace or reconstruct at its own expense its Electric Facilities where such relocation, removal, replacement or reconstruction is solely for the convenience of the City and is not reasonably necessary for the construction or reconstruction of a Public Way or City Utility System or other City improvement.

4.2 Relocation of Electric Facilities in Public Ground. City may require Company at Company's expense to relocate or remove its Electric Facilities from Public Ground upon finding by City that the Electric Facilities have become or will become a substantial impairment to the existing or proposed public use if the Public Ground.

4.3 Projects with Federal Funding. Relocation, removal, or rearrangement of any Company Electric Facilities made necessary because of the extension into or through City of a federally-aided highway project shall be governed by the provisions of Minnesota State Statutes, Section 161.46, as supplemented or amended. It is understood that the right herein granted to Company is a valuable right City shall not order Company to remove or relocate its Electric Facilities

when a Public Way is vacated, improved or realigned because of a renewal or a redevelopment plan which is financially subsidized in whole or in part by the Federal Government or any agency thereof, unless the reasonable non-betterment costs of such relocation and the loss expense resulting there from are first paid to Company, but the City need not pay those portions of such for which reimbursement to it is not available.

4.4 No Waiver. The provisions of this franchise apply only to facilities constructed in reliance on a franchise from the City and shall not be construed to waive any rights obtained by Company for installations within a Company right-of-way acquired by easement or prescriptive right before the applicable Public Way or Public Ground was established, or Company's rights under state or county permit.

#### 1102.05 **TREE TRIMMING**

Company may trim all trees and shrubs in the Public Ways and Public Grounds of City to the extent Company finds necessary to avoid interference: with the proper construction, operation, repair and maintenance of any Electric Facilities installed hereunder, provided that Company shall save the City harmless from any liability arising there from, and subject to permit or other reasonable regulation by the City.

#### 1102.06 **INDEMNIFICATION**

6.1 Indemnity of City. Company shall indemnify, keep and hold City free and harmless from any and all liability on account of injury to persons or damage to property occasioned by the construction, maintenance, repair, inspection, the issuance of permits, or the operation of the Electric Facilities located in Public Ways and Public Grounds. The City shall not be indemnified for losses or claims occasioned through its own negligence except for losses or claims arising out of or alleging the City's negligence as to the issuance of permits for, or inspection of, Company's plans or work. The City shall not be indemnified if the injury or damage results from the performance in a proper manner of acts reasonably deemed hazardous by Company, and such performance is nevertheless ordered or directed by City after notice of Company's determination.

6.2 Defense of City. In the event a suit is brought against the City under circumstances where this agreement to indemnify applies, Company at its sole cost and expense shall defend the City in such suit if written notice thereof is promptly given to Company within a period wherein Company is not prejudiced by lack of such notice. If Company is required to indemnify and defend, it will thereafter have control of such litigation, but Company may not settle such litigation without the consent of City, which consent shall not be unreasonably withheld. This section is not, as to third parties, a waiver of any defense or

immunity otherwise available to City; and Company in defending any action on behalf of the City, shall be entitled to assert in any action every defense or immunity that the City could assert in its own behalf.

#### 1102.07 **VACATION OF PUBLIC WAYS**

The City shall give Company at least two weeks prior written notice of a proposed vacation of a Public Way. Except where required for a City improvement project, the vacation of any Public Way, after the installation of Electric Facilities, shall not operate to deprive Company of its rights to operate and maintain such Electrical Facilities, until the reasonable cost of relocating the same and the loss and expense resulting from such relocation are first paid to Company. In no case, however, shall City be liable to Company for failure to specifically preserve a right-of-way under Minnesota Statutes, Section 160.29.

#### 1108.08 **CHANGE IN FORM OF GOVERNMENT**

Any change in the form of Government of the City shall not affect the validity of this Ordinance. Any Governmental unit succeeding the City shall, without consent of Company, succeed to all of the rights and obligations of the City provided in this Ordinance.

#### 1102.09 **PROVISIONS OF ORDINANCE**

9.1 Severability. Every section, provision, or part of this Ordinance is declared separate from every other section, provision, or part; and if any section, provision, or part shall be held invalid, it shall not affect any other section, provision, or part. Where a provision of any other City ordinance conflicts with the provisions of this Ordinance, the provision of this Ordinance shall prevail.

9.2 Limitation on Applicability. This Ordinance constitutes a franchise agreement between the City and Company as the only parties and provision of this franchise shall in any way inure to the benefit of any their person (including the public at large) so as to constitute any such person as a third party beneficiary of the agreement or of anyone or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.

#### 1102.10 **AMENDMENT PROCEDURE**

Either party to this franchise agreement may at any time propose that the agreement be amended to address a subject of concern and the other party will consider whether it agrees that the amendment is mutually appropriate. If an amendment is agreed upon, this Ordinance may be amended at any time by the City passing a subsequent ordinance declaring the provisions of the amendment,

which amendatory ordinance shall become effective upon the filing of Company's written consent thereto with the City Clerk within 90 days after the date of final passage by the City of the amendatory ordinance.

1102.11

**PREVIOUS FRANCHISES SUPERSEDED**

This franchise supersedes any previous electric franchise granted to Company or its predecessor.

### **Part 3. Cable Television**

1103.01      **GRANT OF FRANCHISE (9-2011 *Midcontinent Communications purchased US Cable; any references to US Cable applies to Midcontinent as of 9-2011*)**

**(07-2021)** AN ORDINANCE AMENDING CHAPTER 11, PART 3. CABLE TELEVISION, GRANTING A FRANCHISE TO MIDCONTINENT COMMUNICATIONS TO CONSTRUCT, OPERATE, AND MAINTAIN A CABLE SYSTEM IN THE CITY OF SHAFER; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM AND THE PUBLIC RIGHTS-OF-WAY; AND PRESCRIBING PENALTIES FOR THE VIOLATION OF THE PROVISIONS HEREIN

1103.02      **GRANTING A FRANCHISE TO MIDCONTINENT CABLE (07-2021)**

Midcontinent Communications and the City of Shafer agree to abide by the terms which are set forth in the Midcontinent Communications Franchise Ordinance (dated July 2021), as the same from time to time which may be amended or renewed, and as they apply to the City of Shafer.

#### **STATEMENT OF INTENT AND PURPOSE**

The City intends, by the adoption of this Franchise, to bring about the further development of a Cable System, and the continued operation of it. Such a development 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 and operation of a Cable System.

The City has considered the elements of a Cable System that, in the judgment of the City, will best meet the needs of the community. This has resulted in the preparation and adoption of this Franchise.

#### **FINDINGS**

In the review of the request for renewal by Midcontinent Communications (“Grantee”) and negotiations related thereto, the City makes the following findings:

1. The Grantee’s technical, financial, legal qualifications and ability, and character were considered and approved in a full public proceeding after due notice and a reasonable opportunity to be heard;

2. Grantee's plans for constructing, upgrading, and operating the System were considered and found adequate and feasible in a full public proceeding after due notice and a reasonable opportunity to be heard;
3. The Franchise granted to Grantee by the City complies with the existing applicable Minnesota Statutes, federal laws and regulations; and
4. The Franchise granted to Grantee is nonexclusive.

## **SECTION 1**

### **SHORT TITLE AND DEFINITIONS**

1. Short Title. This Franchise Ordinance shall be known and cited as the Cable Communications Ordinance.
2. Definitions. For the 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. "Basic Cable Service" means any service tier which includes the lawful retransmission of local television broadcast signals and any public, educational, and governmental access programming required by the Franchise to be carried on the basic tier. Basic Cable Service as defined herein shall not be inconsistent with 47 U.S.C. § 543(b)(7).
  - b. "Cable System" or "System" means a system of antennas, cables, wires, lines, towers, waveguides, or other conductors, Converters, equipment, or facilities located in the Franchise Area and designed and constructed for the purpose of producing, receiving, transmitting, amplifying, or distributing audio, video, and data. System as defined herein shall not be inconsistent with the definitions set forth in Minn. Stat. § 238.02, subd. 3 and 47 U.S.C. § 522(7).
  - c. "Cable Programming Service" means any video programming provided over a cable system, regardless of service tier, including installation or rental of equipment used for the receipt of such video programming, other than:
    1. Basic Cable Service;
    2. Video programming offered on a pay-per-channel or pay-per-program basis; or
    3. A combination of multiple channels of pay-per-channel or pay-per-program video programming offered on a multiplexed or



time-shifted basis so long as the combined service consists of commonly-identified video programming and is not bundled with any regulated tier of service.

Cable Programming Service as defined herein shall not be inconsistent with the definition as set forth in 47 U.S.C. § 543(1)(2) and 47 C.F.R. § 76.901(b).

- d. “Cable Service” means: the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and; subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- e. “Channel” means, that portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering Cable Service.
- f. “City” means the City of Shafer, Minnesota.
- g. “Class IV Channel” means a signaling path provided by a Cable System to transmit signals of any type from a Subscriber terminal to another point in the System.
- h. “Commission” means the Chisago Lakes Cable Commission, a municipal joint powers body established pursuant to applicable law.
- i. “Converter” means an electronic device by which an appropriate selector permits a Subscriber to view all authorized channels.
- j. “Drop” means the cable that connects the ground block on the Subscriber’s residence to the nearest feeder cable of the System.
- k. “FCC” means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.
- l. “Franchise” or “Cable Franchise” means a Cable System and/or Cable Service authorization granted by the City authorizing a Person to construct a System or other facility in the Streets or rights-of-ways in the City and/or to provide Cable Service or Video Programming in the City.
- m. “Franchise Area” means the entire area within the municipal boundaries of the City as may be expanded by annexation or other lawful addition.
- n. “Franchise Fee” means the fee or assessment imposed by the City on a Grantee solely because of its status as a recipient of a Cable Franchise. 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; (iii) capital costs related to the provision of public, educational, or governmental access facilities; (iv) 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 other regulatory costs specifically required herein in addition to the Franchise Fee; (iv) any fee imposed under Title 17 of the United States Code.

- o. “Grantee” is Midcontinent Communications, a South Dakota partnership, its agents and employees, lawful successors, transferees or assignees.
- p. “Gross Revenues” means all revenue received directly or indirectly by the Grantee, or its affiliates from the operation of its System within the City, including but not limited to Cable Service fees, late fees, interest, Installation and reconnection fees, upgrade and downgrade fees, advertising revenue, Franchise Fee receipts, revenues generated by sales on home shopping channel(s), leased channel fees, Subscriber equipment rental fees, Lockout Device fees, and other revenues generated for Cable Service. The term Gross Revenues shall not include bad debt, or any taxes on services furnished by Grantee which are imposed by any municipality, state, or other governmental unit and collected by Grantee for such governmental unit. Goss 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 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) included in the bundle or package of services. The Grantee shall apportion the revenues generated from bundled or packaged services on a proportionate pro rata basis among the services offered unless such allocation methodology is directly in conflict with GAAP, in which case Grantee shall allocate bundled revenues in accordance with GAAP, and in no event shall the Grantee allocate the revenues to evade its Franchise Fee obligations under this Franchise or disproportionately reduce Gross Revenues.

- q. “Installation” means the connection of the System from feeder cable to the point of connection with the Subscriber Converter. Standard Installation means an installation within one hundred fifty (150) feet from the nearest System tap to the ground block on the Subscriber’s residence or institution.
- r. “Normal Business Hours” means those hours during which most similar businesses in the community are open to serve customers.

- s. “Normal Operating Conditions” means those service conditions that are within the reasonable control of Grantee. Those conditions which are not within the control of Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the System.
- t. “PEG Access” means public, educational, governmental and other public interest programming channels, equipment, facilities, funding, or operations as the context may require.
- u. “Pay Television” means the delivery over the System of pay-per-channel or pay-per-program audio-visual signals to Subscribers for a fee or charge, in addition to the charge for Basic Cable Service or Cable Programming Services.
- v. “Person” is any person, firm, partnership, association, corporation, company, or other legal entity.
- w. “Right-of-Way” or “Rights-of-Way” means the area on, below, or above any real property in the Franchise Area in which the City has a real property 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.
- x. “Right-of-Way Ordinance” means such ordinance adopted by the City creating requirements regarding regulation, management and use of Rights-of-Way, including registration and permitting requirements.
- y. “Standard Installation” means any residential installation which can be completed using a Drop of 150 feet or less.
- z. “Subscriber” means any Person who lawfully receives service via the System.

## **SECTION 2**

### **GRANT OF AUTHORITY AND GENERAL PROVISIONS**

- 1. Grant of Franchise.

- a. This Franchise is granted pursuant to the terms and conditions contained herein.
  - b. The Grantee shall have the right and privilege pursuant to this Franchise to construct, erect, maintain, and operate a Cable System in, upon, along, across, above, over and under the Rights-of-Way in the City and any other utility easement and provide Cable Service. The System constructed and maintained by Grantee or its agents shall not interfere with other uses of the Rights-of-Way. Grantee shall make use of existing poles and other above and below-ground facilities available to Grantee to the extent it is technically and economically feasible to do so.
  - c. Notwithstanding the above grant to use Rights-of-Way, use of such Rights-of-Way shall not be inconsistent with the terms and conditions by which such Rights-of-Way were created or dedicated and is subject to all legal requirements related to the use of such Rights-of-Way, including the terms and conditions of any applicable Right-of-Way Ordinance.
  - d. This Franchise shall be nonexclusive. Additional Cable Franchises granted by the City shall be granted on terms and conditions which, taken as a whole, are no more favorable nor less burdensome than those imposed in previously granted Franchises.
  - e. It shall be unlawful for any person to construct, operate, or maintain a Cable System or provide Cable Service without a Franchise, unless valid applicable federal or state law prohibits the city's enforcement of such a requirement.
2. Lease or Assignment Prohibited. Other than for the provision of commercial leased access video programming, no Person may lease Grantee's System for the purpose of providing Cable Service until and unless such Person shall have first obtained and shall currently hold a valid Franchise. This provision shall not apply to any agreements to allow a third-party to use a portion of Grantee's system to provide only telecommunications services that are not subject to franchising by the City pursuant to applicable law. Any assignment of rights under this Franchise shall be subject to and in accordance with the requirements of Section 9.5.
3. Franchise Term. This Franchise shall be in effect for a period of ten (10) years from the date of acceptance by Grantee. Notwithstanding, this Franchise shall be subject to periodic evaluation not less than every five (5) years as provided in Section 7.6 herein.
4. Previous Franchises. Upon acceptance by Grantee as required by Section 12 herein, this Franchise shall supersede and replace the previous Ordinance

granting a Franchise to Grantee.

5. Compliance with Applicable Laws, Resolutions and Ordinances. The terms of this Franchise shall define the contractual rights and obligations of Grantee with respect to the provision of Cable Service and operation of the System in the City. However, the Grantee shall at all times during the term of this Franchise be subject to all lawful exercise of the police power, local ordinance-making authority, and eminent domain rights of the City. Notwithstanding Minn. Stat. § 237.163, Subd. 6(c), in the event of any conflict between this Franchise and a Right-of-Way Ordinance or other regulation which addresses usage of the Rights-of-Way, the conflicting term of this Franchise shall be superseded by such ordinance or regulation regardless of which requirement was first adopted unless such Right-of-Way Ordinance or other regulation is inconsistent with or preempted by applicable federal law.
6. Territorial Area Involved. This Franchise is granted for the corporate boundaries of the City, as it exists from time to time provided, however, that the City intends by its participation in the Commission for Cable Service to be provided throughout the Franchise Area, subject to the line extension provisions of Section 4.3. In the event of annexation by City or as development occurs, any new territory shall become part of the territory for which this Franchise is granted, provided, however, that Grantee shall not be required to extend the Cable System beyond its present System boundaries except as provided in Section 4.3.
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 Clerk of this Franchise or forty-eight (48) 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 Shafer  
   17656 303rd St  
   Shafer, MN 55074  
   Attn: City Clerk

With copies to:                      Robert J.V. Vose, Esq.  
   Kennedy & Graven, Chartered  
   150 South 5<sup>th</sup> Street, Suite 700  
   Minneapolis, MN 55402

If to Grantee:                        Nancy Vogel, Director of Regulatory Finance

Midcontinent Communications  
3901 N. Louise Ave.  
Sioux Falls, SD 57107

With copy to: Patrick J. Mastel, SVP & General Counsel  
Midcontinent Communications  
3901 N. Louise Ave.  
Sioux Falls, SD 57107  
[notices@midco.com](mailto:notices@midco.com)

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

### **SECTION 3**

#### **CONSTRUCTION STANDARDS**

1. Registration, Permits and Construction Codes.
  - a. Grantee shall 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 System in the City Franchise Area.
  - b. The City shall have the right to inspect all construction or installation work performed pursuant to the provisions of the Franchise and to make such tests as it shall find necessary to ensure compliance with the terms of the Franchise and applicable provisions of local, state and federal law.
2. Repair of Rights-of-Way and Property. Any and all Rights-of-Way, other public property, or private property which are disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance or reconstruction of the System shall be promptly and fully restored by Grantee, at its expense, to the same condition as that prevailing prior to Grantee's work. Restoration shall be completed within no longer than 30 days. If, after notice and the opportunity to cure, Grantee fails to promptly perform the restoration required herein, the City may perform the restoration of the Rights-of-Way, other public, or private property as required herein at Grantee's expense.
3. Drop Burial. Grantee shall bury all Drops in a reasonable time period, which shall not exceed forty-five (45) days, subject to weather conditions and the completion of required utility locates. In the event the ground is frozen or flooded, Grantee shall be permitted to delay burial until the ground is suitable for burial which in the case of frozen ground shall not be later than June 30th.

4. Conditions on Right-of-Way Use.

- a. Nothing in this Franchise shall be construed to prevent the City from adopting a Right-of-Way Ordinance.
- b. Nothing in this Franchise shall be construed to prevent the City from constructing, maintaining, repairing or relocating sewers; grading, paving, maintaining, repairing, relocating and/or altering any Right-of-Way; constructing, laying down, repairing, maintaining or relocating any water mains; or constructing, maintaining, relocating, or repairing any sidewalk or other public work.
- c. All System transmission and distribution structures, lines and equipment erected by the Grantee shall be located so as not to obstruct or interfere with the use of Right-of-Way and to cause minimum interference with the rights of property owners who abut any of said Right-of-Way and not to interfere with existing public utility installations.
- d. If required by City, Grantee shall furnish to and file with City Clerk System mapping data in accordance with the ROW Ordinance. City agrees to maintain the confidentiality of such documentation to the maximum extent permitted by the Minnesota Data Practices Act. If mapping data is not required by the ROW Ordinance, Grantee shall furnish to and file with the City upon request maps depicting the location and type of facilities constructed, including underground facilities.
- e. If at any time during the period of this Franchise City shall elect to alter or change the grade or location of any Right-of-Way, the Grantee shall, upon reasonable notice by the City, remove and relocate its poles, wires, cables, conduits, manholes and other fixtures of the System, and in each instance comply with the standards and specifications of the City.
- f. The Grantee shall comply with the City's ROW Ordinance in placing poles, conduits, or other fixtures of System.
- g. The Grantee shall, upon request of any Person holding a moving permit issued by City, temporarily move its wires or fixtures to permit the moving of buildings with the expense of such temporary removal to be paid in advance by the Person requesting the same, and the Grantee shall be given not less than ten (10) days advance notice to arrange for such temporary changes.
- h. The Grantee shall have the authority to trim any trees upon and overhanging the Rights-of-Way only to the extent necessary to

prevent the branches of such trees from coming in contact with the wires and cables of the Grantee. If said trees are not located in the Right-of-Way, Grantee must notify the owner of the property prior to trimming.

- i. Except in emergency circumstances, Grantee shall give reasonable prior notice to any private property owners who will be directly affected or impacted by Grantee's work in the Rights-of-Way.
5. Undergrounding of Cable. Grantee must place proposed new plant underground in areas where all other utility lines are placed underground. Grantee shall participate in joint trenching if Grantee is able to reach commercially reasonable terms with the other occupants of a proposed trench provided that Grantee receives written notice at least thirty (30) days prior to opening of the trench. For purposes of this section, "commercially reasonable terms" means a construction cost that is less than Grantee's cost to independently place its facilities underground by any means. Amplifier boxes and pedestal mounted terminal boxes may be placed above ground if existing technology reasonably requires, subject to the ROW Ordinance and the City's reasonable requirements with respect to the size, design and location of such facilities.
6. Safety Requirements. The Grantee shall install and maintain its System and other equipment in accordance with all federal, state and local laws and regulations, and the requirements of the latest edition of the National Electric Safety Code.

## **SECTION 4**

### **SYSTEM DESIGN AND EXTENSION PROVISIONS**

1. Channel Capacity.
  - a. Grantee shall maintain, at minimum, a 750 MHz fiber/coaxial System delivering at least 78 video programmed channels. The System shall be designed as more fully detailed in Exhibit A attached.
  - b. All programming decisions remain the discretion of Grantee; provided, however, that any change in the broad categories of video programming or other information services shall require the approval of the City consistent with 47 U.S.C. § 544(b), and further provided that Grantee notifies the City and Subscribers in writing thirty (30) days



prior to any channel additions, deletions, or realignments, in a manner consistent with federal law. Grantee may conduct programming surveys from time to time to obtain input on programming decisions from Subscribers.

2. [Intentionally Omitted]

3. System Extension/Density Requirement.

- a. Grantee shall be required to extend the System and Service to any Person located in an area with a density of twenty-five (25) or more dwelling units per linear mile as measured from the nearest System node or amplifier. Grantee shall extend the System and Service to any requesting commercial establishment on commercially reasonable terms.
- b. No later than December 31, 2021, Grantee shall extend the System and Service beyond the existing System boundaries to the platted lots in the development(s) indicated in Exhibit B. Grantee may not impose a connection fee or individualized charge for such extension.
- c. Grantee shall extend the System and Service to requesting Persons where the density is less than that specified in Section 4.3.a. at a cost equal to the Grantee's actual construction costs per mile multiplied by a fraction whose numerator equals the actual number of dwelling units per mile, and whose denominator equals twenty-five (25). Those Persons requesting Service may be required to bear all or a portion of such costs on a pro rata basis ("Construction Share"). The City may also contribute to the Construction Share to reduce the cost to requesting Persons.
- d. In the case of new residential developments constructed after the effective date of this Franchise, City shall endeavor to notify Grantee of any proposed new developments to allow Grantee to participate in the construction planning process. City may also include a provision in subdivision or development agreements requiring the developer to provide for System extension to the development including the use of joint trenching.
- e. Access to 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.
- f. For future developments, Grantee shall be given a reasonable time, not to exceed 1 year, to construct and activate cable plant

to service annexed or newly developed areas subject to Section 4.3(a) herein.

- g. Grantee shall have no line extension obligation in the event the City lawfully authorizes a Multichannel Video Programming Distributor ("MVPD") as defined in 47 USC §522 (13), including an Open Video System ("OVS") as defined in 47 CFR § 76.1501 (b), to provide service in less than the entire Franchise Area. For purposes of this Section, an MVPD shall not include a direct broadcast satellite (DBS) provider.
- 4. Non-Standard Installations. Grantee shall install and provide Cable Service to any Person requesting other than a Standard Installation provided that said Cable Service can meet FCC technical specifications. In such case, Grantee may charge for the Non-Standard Installation.
- 5. 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 Cable Systems pursuant to Title 47, Section 76.601 to 76.617, as may be amended or modified from time to time, which regulations are expressly incorporated herein by reference. Any failure to comply with the FCC technical standards shall be a violation of this Franchise.
- 6. Performance Review and System Testing.
  - a. In the event City finds that there are signal or System performance difficulties which may constitute violations of applicable FCC technical standards and this Franchise, the City may test the System upon thirty (30) days prior written notice to Grantee. Such tests shall be scheduled at a time which will create the least disruption to Subscribers.
  - b. Grantee shall be afforded thirty (30) days to correct problems or complaints before the City orders such tests. If the performance difficulty is not resolved after the cure period has elapsed in City's sole determination, tests shall be conducted by a consultant selected by the City. In the event the testing shows that the performance difficulty is caused by a violation of FCC technical specifications, reasonable fees, costs and expenses incurred by City in relation to said testing shall be reimbursed by the Grantee. City and Grantee may agree at any time to an appropriate remedy for such performance difficulty.
- 7. FCC Reports. Upon request, Grantee shall file with City all required FCC technical reports which demonstrate the level of System performance and signal quality. Further, Grantee shall

explain the results of any such testing provided to the City.

8. Nonvoice Return Capability. Grantee is required to use cable having the technical capacity for nonvoice return communications.

## **SECTION 5**

### **SERVICES PROVISIONS**

1. Regulation of Service Rates.
  - a. The City may regulate rates for the provision of Cable Service, equipment, or any other service provided over the System to the extent allowed under federal or state law(s).
  - b. A list of Grantee's current residential Subscriber rates and charges shall be maintained by Grantee on its website. Grantee shall give the City and Subscribers written notice of any change in a rate or charge no less than thirty (30) days prior to the effective date of the change unless such change arises from changes in regulatory fees, franchise fees, access costs or franchise imposed costs or as otherwise provided by federal law.
2. Sales Procedures. Grantee shall not exercise deceptive sales procedures when marketing any of its services within City. Grantee shall have the right to market consistent with local ordinances and other applicable laws and regulations.
3. 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 thirty (30) seconds

when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) additional seconds. These standards shall be met no less than an average of ninety (90) percent of the time under Normal Operating Conditions, measured on a quarterly basis.

Under Normal Operating Conditions, the customer will receive a busy signal less than three (3) percent of the time.

4. Installation, Outage and Service Calls. Under Normal Operating Conditions, each of the following standards will be met no less than an average of ninety five (95) percent of the time measured on a quarterly basis: (1) Standard Installations will be performed within seven (7) business days after an order has been placed and all other Installations will be performed within a reasonable period of time; (2) 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; (3) 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; (4) Grantee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment; (5) 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 which is convenient for the customer.
5. 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. Upon request, Grantee shall provide compliance reports on a quarterly basis with respect to the objectively measurable service standards, provided nothing herein shall require Grantee to acquire equipment to measure any particular performance criteria.
6. 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.

7. Billing and Subscriber Communications. Subject to Section 5.1.a. herein and to the extent that changes are in the control of Grantee, Grantee must give Subscribers thirty (30) days advance notice with copy to City before any changes in rates, programming services, or channel positions. In case of a billing dispute, the cable operator must respond to a written complaint from a subscriber within 30 days. Bills must clearly delineate all activity during the billing period, including optional charges, rebates, and credits.
8. Refunds and Credits. If Service is interrupted or discontinued for 24 or more consecutive hours and Grantee has notice of such interruption, Subscribers shall be credited pro rata for such interruption beginning with the date of interruption. Credits for interrupted service will be issued no later than the Subscriber's next billing cycle following the determination that a credit is warranted. In the event a Subscriber establishes or terminates Service and receives less than a full month's Service, Grantee shall prorate the monthly rate on the basis of the number of days in the period for which Service was rendered to the number of days in the billing. Refund checks will be issued promptly, but no later than ten (10) days after the return of the equipment supplied by the Grantee if Service is terminated.
9. 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. The cable operators shall continue to provide a "grace period" of at least five (5) days after each due date.
10. 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.
11. Violations. Any violation of these requirements shall be deemed a violation of this Franchise.

## **SECTION 6**

### **PUBLIC SERVICES PROVISIONS**

1. Public, Educational and Government Access.
  - a. PEG Responsibility. City or its designee is hereby designated to operate, administer, promote and manage PEG Access in accordance with this Section 6.

- b. PEG Channels. Grantee shall dedicate two (2) Channels for PEG Access use. The two (2) PEG Access Channels, and all programming cablecast by the City or its designee on such Channels, shall be made available to and received by all Subscribers including those that only receive Basic Cable Service. Grantee may not move or renumber the PEG Access Channels (Channels 10 and 20) without the City's prior written approval which shall not be unreasonably withheld. At such time that the City or its designee produce PEG Access programming in high definition (HD), Grantee shall, within one-hundred eighty (180) days' notice, provide the PEG Access Channels in HD. Grantee shall further ensure that any Subscribers receiving programming only in standard definition (SD) format remain able (via converters or other end-user equipment) to receive and view the PEG Access Channels provided in HD.
- c. Additional PEG Channels. Whenever either of the channels required herein are in use for more than fifty percent (50%) of prime time (as defined in Section 76.5(n) of the FCC rules and regulations) and more than fifty percent (50%) outside of prime time over a three-month period, with at least fifty percent (50%) of the programming being original and not duplicated, and there is demand for use of additional channels for the same purpose, upon request of City, the Grantee shall have six (6) six months to make an additional channel available for the same purpose on a service tier other than Basic Cable Service. 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.
- d. PEG Availability. Grantee shall provide two (2) PEG Access channel(s) free of charge to Subscribers who receive Cable Service. The Grantee shall make such System modifications as may be necessary to ensure that all Subscribers residing in the City receive the PEG Access Channels and PEG programming produced by the City or its designee. Subject to Section 6.1(a) above, 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 channel is 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. Grantee may also use this specially designated access channel 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.

- e. Charges for Use. Channel time and playback of prerecorded programming on the PEG access and community program channel(s) must be provided without charge to the City and the public.
- f. Access Equipment and Facilities.
  - 1. Grantee shall collect and pay to the Commission, as City's designee, forty cents (\$0.40) per Subscriber, per month in support of PEG capital needs ("PEG Fee"). Grantee shall remit the PEG Fee funds to the City on a quarterly basis within thirty (30) days from the closing of each quarter. The City may increase the PEG Fee to up to One Dollar (\$1.00) per Subscriber, per month upon ninety (90) days prior written notice to Grantee. The City may reduce the PEG Fee amount at any time upon sixty (60) days prior written notice to Grantee. The PEG Fee will be implemented in the City of Shafer within twelve (12) months from the Effective Date of the Shafer Franchise.
  - 2. Grantee shall provide a two-way activated drop to the demarcation point at or outside of each of the following: City Hall and any other site(s) selected by the City provided that installation of the first two hundred (200) feet of such additional drops shall be provided free of charge and thereafter at commercially reasonable rates. Unless Grantee otherwise consents, the drops may only be used for receiving or distributing (cablecasting) Video Programming. Grantee shall have no obligation to provide any customer premises equipment.
- g. Access Rules. The Commission, or its designee, may implement rules for use of any access channel(s).
- 2. Data Capacity. Grantee will provide data transmission service to the City, Commission, educational institutions, or other institutions on mutually acceptable terms and conditions including, but not limited to a rate equivalent to similarly situated users in Minnesota. Grantee may require the requesting institution to enter into a lease or service agreement on mutually agreeable terms and conditions. The City may not assign or sublease any service or capacity nor shall allow use for any purpose other than non-commercial use.
- 3. Drops and Service to Public Buildings. Grantee shall provide, free of charge, Installation of one (1) Drop, one (1) cable outlet, and

monthly Cable Programming Service, to City Hall, and such other institutions which the City may designate and which are within 200 feet of the System. Drops to subsequently designated institutions in excess of 200 feet shall be provided by the Grantee at commercially reasonable rates less the cost of the first 200 feet. Grantee shall have one (1) year from the date of the City designation of additional institution(s) to complete construction of the Drop and outlet, weather permitting. Additional Drops and/or outlets shall be provided by Grantee at commercially reasonable rates. Alternatively, at the institution's request, said institution may add outlets at its own expense, as long as such Installation meets applicable FCC technical standards. No redistribution of the free Service provided pursuant to this Section shall be allowed without the Grantee's prior written consent.

4. Cable Modem Internet Services to Public Institutions. Upon request, Grantee shall provide internet service to City Hall, the schools, and other public institutional sites in the Franchise Area as provided in Section 6.2 above upon commercially reasonable terms.

## **SECTION 7**

### **OPERATION AND ADMINISTRATION PROVISIONS**

1. Administration of Franchise. The City or its designee shall have continuing regulatory jurisdiction and supervision over the System and the Grantee's operation under the Franchise.
2. Delegated Authority. The City has delegated to the Commission authority to administer the Franchise and to monitor the performance of the Grantee pursuant to the Franchise. City may withdraw or re-delegate such authority by giving Grantee written notice. Grantee shall cooperate with any such delegatee of the City; provided however that the authority to revoke or terminate this Franchise under Section 9.2 shall continue to reside solely with the City Council.
3. 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.
  - 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 of Grantee's gross revenues 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.
- d. FCC Preemption. In the event Grantee is legally permitted, in accordance with Applicable Law, to offset the value of any non-monetary obligation contained in the this Franchise against Franchise Fees payable to the City, the Grantee agrees that it: 1) will do so only after providing City with a minimum of One Hundred Twenty (120) days prior written notice; and 2) will treat all franchising authorities in Minnesota in a generally equal manner in areas where Grantee provides Cable Service and where Grantee is legally authorized to impose said offset. The purpose of the 120-day notice will be to allow for the parties to determine if the Franchise obligation in question should be maintained or if the Franchise should be modified to eliminate or reduce the need for any legally permitted offset by Grantee against Franchise Fees.

4. Records.

a. The City shall have the right to inspect, upon reasonable notice and during Normal Business Hours, any records maintained by Grantee which relate to Cable System operations including specifically a Grantee's accounting and financial records solely to verify compliance with a Grantee's Franchise Fee payment obligation; provided, however, that the City shall treat records identified by Grantee as trade secret in accordance with the Minnesota Data Practices Act. Grantee shall maintain at least six years financial records concerning Grantor's Franchise Fee payments.

b. The City acknowledges that some of the records, including maps, financial information and facility location information, that may be provided by a Grantee may be considered confidential trade secrets by a Grantee and therefore may subject a Grantee to competitive disadvantage if made public. The City will maintain the confidentiality of any records provided to it by a Grantee that are identified by Grantee in writing as "confidential trade secret," if they are not required to be made public pursuant to applicable laws. Upon receipt of demand from any third party for disclosure of records, the City shall advise a Grantee and provide a Grantee with a copy of any written request by the party demanding access to such records, if available. The City agrees that, to the extent permitted by state and federal law, it shall deny access to any of a Grantee's books and records marked confidential as set forth above. Subject to the City's compliance with this section, the City shall not be liable to a Grantee for

any submission or disclosure of such information to a third party as required by applicable law or to a government agency or regulatory body seeking the records and claiming jurisdiction in any of these events. Nothing in this Section shall limit the right of a Grantee to contest disclosure or submission to a third party as required by law or to a government agency or regulatory body asserting jurisdiction over it or such subject matter before such disclosure shall be effected. A Grantee shall reimburse the City for all reasonable costs and attorneys' fees incurred in any legal proceedings pursued under this Section.

5. 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. Grantee and City shall hold evaluation sessions after the fifth and tenth years of this franchise.

b. All evaluation sessions shall be open to the public. Grantee shall notify its Subscribers of all evaluation sessions by announcement of at least sixty (60) seconds in duration on at least one (1) Basic Service channel of the System 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, System performance, 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 an amendment to 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 life of the Franchise. The inability to recover the investment and earn a reasonable rate of return during the remaining term of the Franchise shall constitute economic infeasibility.

## **SECTION 8**

### **GENERAL FINANCIAL AND INSURANCE PROVISIONS**

1. Security Fund.

a. Within fourteen (14) days of receipt of a notice from the City of an alleged breach of this Franchise, Grantee shall provide, from a financial

institution mutually acceptable to the parties, and in a form and substance mutually acceptable to the City, one (1) irrevocable and unconditional letter of credit in the sum of Twenty-five thousand and No/100 Dollars (\$25,000.00) for the benefit of the City to ensure compliance by Grantee with all terms of the Franchise and the payment by Grantee of any claim, penalties, damages, liens and taxes due the City under the Franchise ("Security Fund"). The letter of credit shall be provided by the Grantee regardless of whether the Grantee disputes the alleged violation. Any failure by the Grantee to provide the letter of credit as required herein shall constitute a separate breach of this Franchise. Any interest on the deposit shall be paid to the Grantee. Once the proceeding addressing the alleged violation has been completed, the Grantee shall be relieved of maintaining the letter of credit until such time as another alleged violation notification is received by Grantee, at which time the process shall begin again.

b. The Security Fund shall provide that funds will be paid to the City, upon written demand of the City, and after the procedures of this section have been complied with in payment for liquidated damages charged pursuant to this section or in payment for any monies owed by the Grantee pursuant to its obligations under this Franchise.

2. Penalty. City, in its sole discretion may charge to and collect from the Security Fund the following mutually agreed upon liquidated damages:

a. For failure to timely complete line extensions as provided in this Franchise unless the City has approved delays, failure to meet the customer service standards and requirements as set forth in this Franchise and the exhibits hereto the penalty shall be One Hundred Fifty and No/100 Dollars (\$150) daily fine per day for each day, or part thereof, such failure occurs or continues.

b. For failure to comply with the terms and conditions of this Franchise with the exception of those terms as outlined in Paragraph 1(a)(i) above, the penalty shall be One Hundred and No/100 Dollars (\$100) daily fine per day for each day, or part thereof, such failure occurs or continues.

3. Franchise Violation.

a. If City finds that Grantee has violated one (1) or more terms, conditions or provisions of this Franchise, a written notice shall be given to Grantee, specifying with particularity the alleged violation. At any time after thirty (30) days (or such additional reasonable time which is necessary to cure the alleged violation) following local receipt of notice, provided Grantee remains in violation of one (1) or more terms, conditions or provisions of this Franchise, City may impose all penalties and other monies due from the date of the local receipt of notice and Grantee shall

have no more than five (5) business days to remit such penalties and other monies due the City.

b. Whenever notice of an alleged violation has been received by Grantee, Grantee may, within thirty (30) days of local receipt of notice, notify the issuer of the notice that there is a dispute as to whether a violation or failure has, in fact, occurred. Such notice by Grantee shall toll the running of the time frames for cure and the accrual of any penalties herein, and shall specify with particularity the matters disputed by Grantee. City shall hear Grantee's dispute at its next regularly scheduled meeting or as soon thereafter as possible. Grantee shall be afforded a reasonable notice of the meeting and afforded a reasonable opportunity to participate in and be heard at the meeting. City shall supplement its decision with a written order sustaining or overruling the decision, and shall specify with particularity the basis for its decision.

c. If Grantee fails either to cure the alleged violation or breach within the time prescribed or to commence correction of the violation or breach within the time prescribed and thereafter diligently pursue correction of such alleged violation or breach, the City shall then give written notice of not less than fourteen (14) days of a public hearing to be held before the Council. Said notice shall specify the violations or breaches alleged to have occurred.

d. At the public hearing, the Council shall hear and consider relevant evidence and thereafter render findings and its decision.

e. In the event the Council finds that a material violation or breach exists and that Grantee has not cured the same in a satisfactory manner or has not diligently commenced to cure of such violation or breach after notice thereof from City and is not diligently proceeding to fully cure such violation or breach, the Council may revoke and terminate the Franchise or impose liquidated damages in accordance with Section VIII, Paragraph 2. Grantee may appeal such action to any court and/or regulatory agency of competent jurisdiction and the Franchise shall remain in effect during the pendency of such appeal(s).

f. Upon determination that no violation has taken place, City shall withdraw the notice alleging a violation.

4. 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 the construction, operation, maintenance, repair or removal of, or other action or event with respect to the System or as to any other action or event with respect to this

Franchise, except as may be caused by the willful or grossly negligent act of the City or its officers, boards, commissions, committees, elected officials, employees and agents.

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 the exercise, administration, or enforcement of the Franchise including, but not limited to, the reimbursement to City of any insurance deductible paid by City. Grantee's obligations herein shall not include any action brought by Grantee or any alleged or actual liability which is based solely on City's operation of PEG access facilities or equipment or the programming provided via such PEG facilities or equipment.

c. Nothing in this Franchise relieves a Person, except the City, from liability arising out of the failure to exercise reasonable care to avoid injuring the Grantee's facilities while performing work connected with grading, regrading, 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:

1. Promptly notify Grantee in writing of any claim or legal proceeding which gives rise to such right.
2. Afford Grantee the opportunity to participate in and fully control any compromise, settlement or other resolution or disposition of any claim or proceeding; and
3. Fully cooperate with reasonable requests of Grantee, at Grantee's expense, in its participation in, and control, compromise, settlement or resolution or other disposition of such claim or proceeding subject to Paragraph 2 above.

5. Insurance.

a. Grantee shall maintain, throughout the term of the Franchise, liability insurance insuring Grantee and the City with regard to damages in the minimum amounts of:

1. One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000.00) for bodily injury or death resulting from any one occurrence;

2. One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000.00) for personal or advertising injury;

3. Two Million and No/100 Dollars (\$2,000,000.00) in the aggregate for General Liability.

b. The Grantee will name the City as additional insured as respects General Liability coverage subject to policy terms and conditions.

c. At the time of acceptance, Grantee shall furnish to the City a certificate evidencing that a satisfactory insurance policy has been obtained; such insurance policy shall require that the City be notified thirty (30) days prior to any expiration or cancellation.

## **SECTION 9**

### **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.

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 sixty (60) 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 abandon the System or any portion thereof or discontinue providing video programming services without having first given three (3) months written notice to the City. Nothing herein limits or eliminates Grantee's liability to the City for damages resulting from abandonment of the System.
4. Removal After Abandonment, Termination or Forfeiture.
- a. In the event of termination or forfeiture of the Franchise or abandonment of the System, the City shall have the right to require Grantee to remove all or any portion of the System from all Rights-of-Way and public property within the City; provided, however, that the Grantee shall not be required to remove the System if it is authorized to provide telecommunications service pursuant to state or federal law.
  - b. If Grantee has failed to commence removal of 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 the 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 the System, including, but not limited to, the sale of a majority of the entity's assets, a merger including the consolidation of a subsidiary and parent entity, or the creation of a subsidiary or affiliate entity, 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 9.05. 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.
- d. 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 transferee 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.
- e. 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 the System as provided in Minn. Stat. § 238.084(aa).
- f. The City shall be deemed to have waived its right to purchase under in the following circumstances:
  - 1. If it does not indicate to Grantee in writing, within sixty (60) days of notice of a proposed sale or assignment, its intention to exercise or reserve its right of purchase; or
  - 2. It approves the assignment or sale of the Franchise as provided within this Section.
- g. Nothing herein shall prevent the City from obtaining reimbursement of its fees and expenses associated with sale or transfer of the Franchise or System from the proposed transferee.

## **SECTION 10**

### **PROTECTION OF INDIVIDUAL RIGHTS**

- 1. Discriminatory Practices Prohibited. Grantee shall not deny service, deny access, or otherwise discriminate against Subscribers



or general citizens on the basis of race, color, religion, national origin, sex, age, status as to public assistance, affectional preference, or disability. 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. Such written permission shall be for a limited period of time not to exceed one (1) year which may be renewed at the option of the Subscriber. No penalty shall be invoked for a Subscriber's failure to provide or renew such authorization. The authorization shall be revocable at any time by the Subscriber without penalty of any kind whatsoever. Such permission shall be required for each type or classification of Class IV Channel activity planned for the purpose of monitoring individual viewing patterns or practices.
- 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. Such written permission shall be for a limited period of time not to exceed one (1) year which may be renewed at the option of the Subscriber. No penalty shall be invoked for a Subscriber's failure to provide or renew such authorization. The authorization shall be revocable 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 System 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 11

### 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 maintain and operate a System or 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 System construction or System upgrade.
3. Amendment of Franchise Ordinance. Grantee and the City may agree, from time to time, to amend this Franchise in writing, provided that nothing herein restricts the City's right to exercise its police powers.
4. 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.
5. Compliance with Federal, State and Local Laws.
  - a. Grantee and the City shall conform to state laws and rules regarding cable communications not later than one year after they become effective, unless otherwise stated, and to conform to federal laws and regulations regarding cable as they become effective.
  - b. If any term, condition or provision of this Franchise shall, to any extent, be held to be invalid or unenforceable, the remainder and all the terms, provisions and conditions herein shall, in all other respects, continue to be effective provided the loss of the invalid or unenforceable clause does not substantially alter the agreement between the parties. In the event such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision which had been held invalid or modified is no longer in conflict with the law, rules and regulations then in effect, said provision shall thereupon return to full force and effect and shall thereafter be binding.
6. 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.

7. 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.
8. Grantee Acknowledgment of Validity of Franchise. Grantee acknowledges that it has had an opportunity to review the terms and conditions of this Franchise and that under current law Grantee believes that said terms and conditions are not unreasonable or arbitrary, and that Grantee believes the City has the power to make the terms and conditions contained in this Franchise.

## **SECTION 12**

### **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 the date of acceptance by Grantee in accordance with the provisions of this Section 12.2.
2. Acceptance.
  - a. Grantee shall accept this Franchise within sixty (60) days of its enactment by the City, unless the time for acceptance is extended by the City. Such acceptance by the Grantee shall be deemed the grant of this Franchise for all purposes provided. 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.
  - b. Upon acceptance of this Franchise, Grantee shall be bound by all the terms and conditions contained herein.
  - 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 any grant payments, performance bond and insurance certificates required herein that have not previously been delivered.

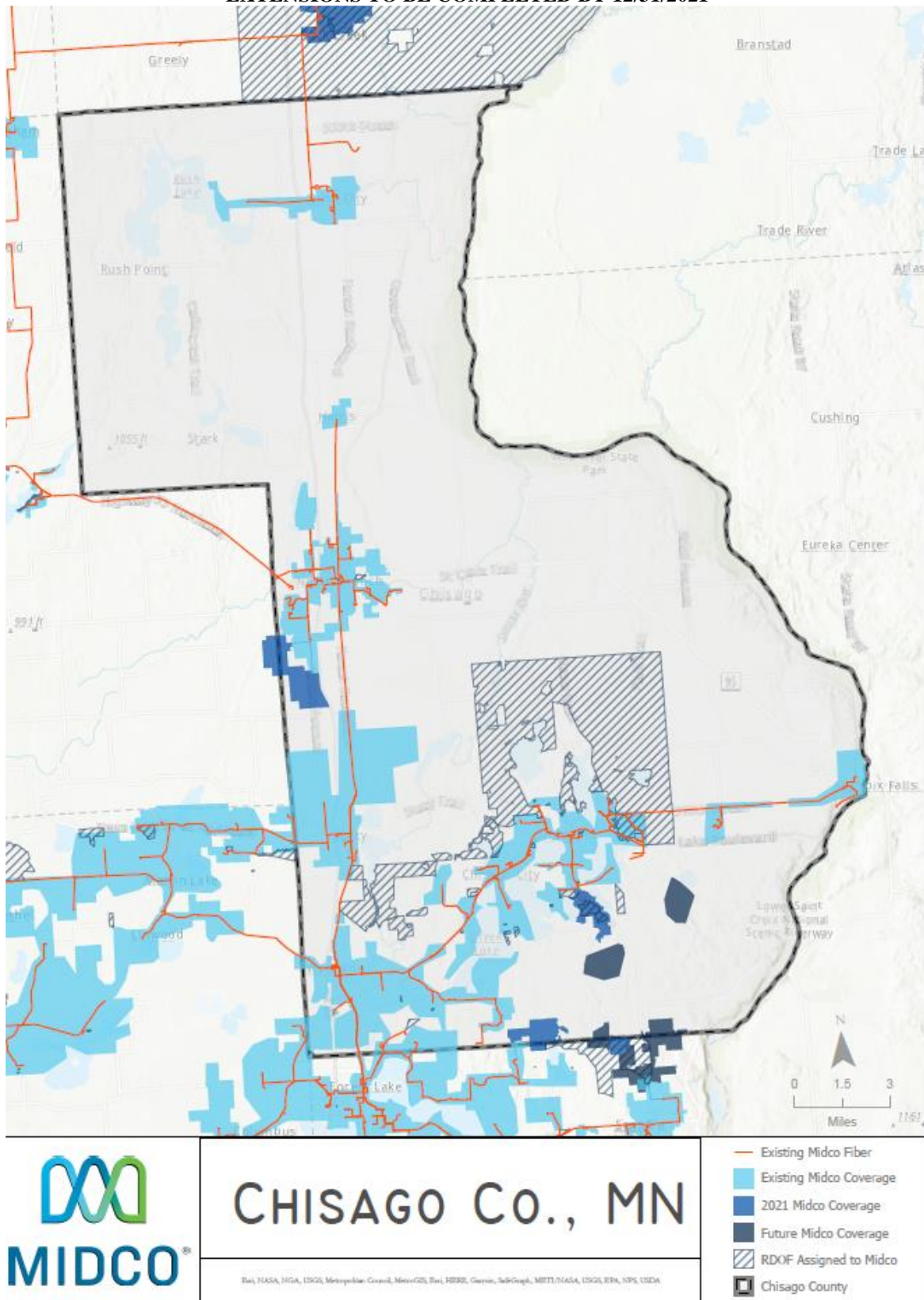
Passed and adopted this 6th day of July, 2021.

### **EXHIBIT A**

The Grantee shall provide a System with, at minimum, the following attributes:

- The electronics deployed in the System will be capable of delivering services 78 video channels.
- The System will utilize a hybrid fiber-coaxial architecture that incorporates fiber optic cable from the headend(s) to nodes.
- The coaxial portion of the plant, which begins at the node itself where signals will be distributed over a short coax network, will consist of modern, high-quality network amplifiers specifically designed for use in hybrid fiber/co-axial networks and will incorporate return-transmission capability. Amplifier cascades will not exceed six (6) amplifiers.
- The Grantee will replace all coaxial plant that is unable to pass the full signal spectrum in accordance with FCC technical standards.
- The return capability will permit transmission of both data and video, and may be used for insertion of locally-originated programming and transmission of data from set-top terminals used for pay-per-view and other services.
- Standby power for System power supplies will be in place for all power supplies.
- The System will have the capability to receive and pass through all local broadcast signals in digital format as required by applicable federal rules and regulations and in compliance with applicable FCC mandated time lines.

**EXHIBIT B  
EXTENSIONS TO BE COMPLETED BY 12/31/2021**



1103.03      **SUBSCRIBER RATES**  
Vacated 04-2011

1103.04      **SERVICE AREA**

The service area shall include all areas within the city limits of Shafer.