

ORDINANCE NO. 180

**AN ORDINANCE TO RENEW THE CABLE FRANCHISE LAWFULLY HELD BY MEDIACOM MINNESOTA LLC, ITS SUCCESSORS OR ASSIGNS, THE NONEXCLUSIVE RIGHTS, PRIVLEDGES AND AUTHORITY TO CONSTRUCT, OPERATE, MAINTAIN, REPAIR, REPLACE, RECONSTRUCT AND REMOVE A CABLE TELEVISION SYSTEM ACROSS PUBLIC PROPERTY IN THE CITY LIMITS FOR A TERM OF FIFTEEN (15) YEARS.**

**BE IT ORDAINED** by the City Council of the City of Ivanhoe, Minnesota that the following agreement shall replace Ordinance No. 167 in its entirety upon the effective date as established herein:

**CABLE TELEVISION FRANCHISE**

This Franchise Agreement (“Franchise Agreement”) is between the City of Ivanhoe, MN, hereinafter referred to as “the Franchising Authority” and Mediacom Minnesota LLC, a limited liability company duly organized and validly existing under the laws of the State of Delaware, hereinafter referred to as “the Grantee.”

The Franchising Authority hereby acknowledges that the Grantee has substantially complied with the material terms of the current franchise under applicable law, and that the financial, legal, and technical ability of the Grantee is reasonably sufficient to provide services, facilities, and equipment necessary to meet the future cable-related needs of the community, and having afforded the public adequate notice and opportunity for comment, desires to enter into this Franchise Agreement with the Grantee for the construction and operation of a Cable System on the terms set forth herein.

**SECTION 1**  
**Definition of Terms**

**1.1 Terms.** For the purpose of this Franchise Agreement, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number:

- A. “Basic Cable Service” is the lowest priced tier of Cable Service that includes the retransmission of local broadcast television signals.
- B. “Cable Act” means Title VI of the Cable Act of 1934, as amended.
- C. “Cable Services” shall mean (1) the one-way transmission to Subscribers of (a) video programming, or (b) other programming service, and (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

- D. "Cable System" shall mean a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and other services to Subscribers within the Service Area.
- E. "FCC" means Federal Communications Commission or successor governmental entity thereto.
- F. "Franchise" means an initial authorization, or renewal thereof (including a renewal of an authorization which has been granted subject to 47 U.S.C. §546) issued by the Franchising Authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a Cable System or other facilities to provide Cable Service or video programming.
- G. "Franchising Authority" means the City of Ivanhoe.
- H. "Grantee" means Mediacom Minnesota LLC, or the lawful successor, transferee, or assignee thereof.
- I. "Gross Revenues" means revenues derived from Basic Cable Services received by Grantee from Subscribers in the Service Area; provided, however, that Gross Revenues shall not include franchise fees, the FCC User Fee, bad debt, tower rent, fees for the sale, leasing, or servicing of equipment, System capacity and/or facilities rent for the provision of non-Cable Services (voice or data services), investment income, advertising revenues, any fees itemized and passed through as a result of Franchise imposed requirements or any tax, fee or assessment of general applicability collected by the Grantee from Subscribers for pass-through to a government agency.
- J. "Multichannel Video Program Distributor or MVPD" means a person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television receive-only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming.
- K. "Open Video Services or OVS" means any video programming Services provided to any person by a Franchisee certified by the FCC to operate an Open Video System pursuant to Section 47 U.S.C. 573, as may be amended, regardless of the Facilities used.
- L. "Person" means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity.
- M. "Public Way" shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses now or hereafter held by the Franchising Authority in the Service Area which shall entitle the Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System.

N. "Service Area" means the present boundaries of the Franchising Authority, and shall include any additions thereto by annexation or other legal means.

O. "Standard Installation" is defined as 125 feet from the nearest tap to the Subscriber's terminal.

P. "Subscriber" means a Person who lawfully receives Cable Service of the Cable System with the Grantee's express permission.

## **SECTION 2** **Grant of Franchise**

**2.1 Franchise Required.** It shall be unlawful for any Person to construct, operate or maintain a Cable System, an OVS system or other facilities to provide Cable Service or other video programming in the Service Area without a Franchise in the form of this Franchise Agreement authorizing the same, unless applicable federal or State law prohibits the Franchising Authority's enforcement of such a requirement.

**2.2 Compliance with Minnesota Statutes.** This Franchise Agreement shall comply with all provisions contained in Minnesota Statutes Chapter 238, and as amended.

**2.3 Nonexclusive Franchise.** This Franchise Agreement shall be nonexclusive.

**2.4 Grant of Franchise.** Grantee is authorized to construct and operate a Cable System in, along, among, upon, across, above, over, under, or in any manner connected with Public Ways within the Service Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Public Way such facilities and equipment as may be necessary or appurtenant to the Cable System for the transmission and distribution of Cable Services or for any other lawful purposes.

**2.5 Additional Franchises.** The Franchising Authority may grant an additional Franchise(s) pursuant to Minn. Stat. §238.081 which is consistent with Minn. Stat. §238.081, subdivision 1(b) and 47 U.S.C. § 541. The Franchising Authority agrees that any grant of additional Franchises or other authorizations including OVS authorizations shall require service to the entire Service Area and shall not be on terms and conditions more favorable or less burdensome to the Grantee. In any renewal of this Franchise Agreement, the Franchising Authority, should it seek to impose increased obligations upon the Grantee, must take into account any additional Franchise(s) or authorizations previously granted and find that the proposed increased obligations in the renewal are not more burdensome and/or less favorable than those contained in any such additional Franchise(s) or authorizations.

(a) In the event Franchising Authority grants one or more additional Franchises or one or more non-franchised MVPD's commence providing Cable Service in the Franchising Authority, Grantee shall have the right to modify this Franchise Agreement as provided herein, terminate the Franchise Agreement or reduce the term of this Franchise Agreement in its sole discretion. All Franchises granted or renewed after the date of this Franchise Agreement shall have the same substantive terms and conditions as this Franchise Agreement in order that one MVPD not be granted a competitive advantage over another. Nothing in this provision shall be constructed in such a way as to limit the Franchising Authority's authority to enter into other Franchises.

(b) In the event a MVPD commences operation without a Franchise or is granted a Franchise or permit to operate by the Franchising Authority, the terms and conditions of which do not comply with this Franchise Agreement, Grantee shall notify the Franchising Authority whether it wishes to modify its Franchise Agreement in addition to any rights it may have to modify its Franchise Agreement under state or federal law, terminate the Franchise Agreement or reduce the term of this Franchise Agreement in its sole discretion. The Franchising Authority and the Grantee shall work together in good faith to develop Franchise Agreement modifications which address any competitive inequity and the Franchising Authority shall adopt those modifications within ninety (90) days after receiving notice from Grantee. Failure to adopt the modifications shall allow Grantee to unilaterally opt into the competitor's Franchise or to otherwise reduce or eliminate any obligations imposed by this Franchise Agreement which are not imposed on a competitor in its sole discretion. A MVPD is not an entity that provides direct broadcast satellite services for purposes of this Section. Notwithstanding any provisions of this Section to the contrary, if the Franchising Authority does not possess authority under applicable laws to require a Franchise from any Person, the provisions of this Section shall not apply.

**2.6 Conformance with State and Federal Laws and Rules.** The Franchising Authority and Grantee shall conform to state laws and rules regarding Cable Services no later than one (1) year after they become effective, unless otherwise stated. The Franchising Authority and Grantee shall conform to federal laws and regulations regarding Cable Services as they become effective. The Grantee agrees to comply with the terms of any lawfully adopted generally applicable nondiscriminatory local ordinance, to the extent that the provisions of the ordinance do not have the effect of limiting the benefits or expanding the obligations of the Grantee that are granted by this Franchise Agreement. Neither party may unilaterally alter the material rights and obligations set forth in this Franchise Agreement. In the event of a conflict between any lawful ordinance, regulation or resolution and this Franchise Agreement, the Franchise Agreement shall control.

### **SECTION 3**

#### **Construction and Operation of Cable System**

**3.1 Compliance with Code.** The System and any wires, conduits, cable, and other property and facilities of the Grantee shall be located, constructed, installed, and maintained in compliance with applicable law. The Grantee must keep and maintain its property so as not to unnecessarily interfere with the usual and customary trade, traffic, or travel upon the streets and public places of the Service Area or endanger the life or property of any person.

**3.2 Permits.** Pursuant to applicable local law, the Grantee shall obtain a permit from the proper municipal authority before commencing construction on its Cable System, including the opening or disturbance of a street, sidewalk, driveway, or public place. In the event that Grantee fails to meet the conditions of such a permit, the Franchising Authority may seek remedies pursuant to applicable local law.

**3.3 Restoration of Public Ways.** Grantee shall comply with applicable law if during the course of the Grantee's construction, operation, or maintenance of the Cable System there occurs a disturbance of any Public Way by the Grantee. Grantee shall replace and restore such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to such disturbance.

**3.4 Procedure for Relocation or Removal for the Franchising Authority.** Upon its receipt of reasonable advance written notice, to be not less than ten (10) business days, the Grantee shall protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way, any property of the Grantee when lawfully required by the Franchising Authority by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of public structures or improvements which are not used to compete with the Grantee's services. The Grantee shall in all cases have the right of abandonment of its property.

**3.5 Relocation for a Third Party.** The Grantee shall, on the request of any Person holding a lawful permit issued by the Franchising Authority, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way as necessary any property of the Grantee, provided: (A) the expense of such is paid by said Person benefiting from the relocation, including, if required by the Grantee, making such payment in advance; and (B) the Grantee is given reasonable advance written notice to prepare for such changes. For purposes of this subsection, "reasonable advance written notice" shall be no less than thirty (30) business days in the event of a temporary relocation, and no less than one hundred twenty (120) days for a permanent relocation.

**3.6 No Relief from Liability.** Nothing contained in the Franchise Agreement shall be construed to relieve a Person from liability arising out of the failure to exercise reasonable care to avoid injuring the Grantee's Cable System while performing work connected with grading, regrading, or changing the line of a street or public place or with the construction or reconstruction of a sewer or water system.

**3.7 Trimming of Trees and Shrubbery.** The Grantee shall have the authority to trim trees or other natural growth in order to access and maintain the Cable System.

**3.8 Underground Construction.** In those areas of the Service Area where all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are underground, the Grantee likewise shall construct, operate, and maintain its Cable System underground. Nothing contained in this subsection shall require the Grantee to construct, operate, and maintain underground any ground-mounted appurtenances.

**3.9 Access to Open Trenches.** The Franchising Authority agrees to include the Grantee in the platting process for any new subdivision. At a minimum, the Franchising Authority agrees to require as a condition of issuing a permit for open trenching to any utility or developer that (A) the utility or developer give the Grantee at least ten (10) days advance written notice of the availability of the open trench, and (B) that the utility or developer provide the Grantee with reasonable access to the open trench. Notwithstanding the foregoing, the Grantee shall not be required to utilize any open trench.

**3.10 Required Extensions of the Cable System.** Grantee agrees to provide Cable Service to all residences in the Service Area subject to the density requirements specified in this subsection. Whenever the Grantee receives a request for Cable Service from a potential Subscriber in an unserved area contiguous to Grantee's existing System where there are at least 10 residences within 1320 cable-bearing strand feet (one-quarter cable mile) from the connection point to Grantee's System, it shall extend its Cable System to such Subscribers at no cost to said Subscribers for the Cable System extension, other than the published Standard/non-Standard

Installation fees charged to all Subscribers. Notwithstanding the foregoing, the Grantee shall have the right, but not the obligation, to extend the Cable System into any portion of the Service Area where another operator is providing Cable Service, into any annexed area which is not contiguous to the present Service Area of the Grantee, or into any area which is financially or technically infeasible due to extraordinary circumstances, such as a runway or freeway crossing.

**3.11 Subscriber Charges for Extensions of the Cable System.** No Subscriber shall be refused service arbitrarily. However, if an area does not meet the density requirements of subsection 3.10 above, the Grantee shall only be required to extend the Cable System to Subscriber(s) in that area if the Subscriber(s) are willing to share the capital costs of extending the Cable System. Specifically, the Grantee shall contribute a capital amount equal to the construction cost per mile, multiplied by a fraction whose numerator equals the actual number of residences per 1320 cable-bearing strand feet from the Grantee's trunk or distribution cable, and whose denominator equals 10. Subscribers who request service hereunder shall bear the remaining cost to extend the Cable System on a pro rata basis. The Grantee may require that payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance. Subscribers shall also be responsible for any Standard/non-Standard Installation charges to extend the Cable System from the tap to the residence.

**3.12 Cable Service to Public Buildings.** The Grantee, upon request, shall provide without charge, a Standard Installation and one outlet of Basic Cable Service to those administrative buildings owned and occupied by the Franchising Authority, fire station(s), police station(s), and K-12 public school(s) that are passed by its Cable System. The Cable Service provided shall not be distributed beyond the originally installed outlet without authorization from the Grantee. The Cable Service provided shall not be used for commercial purposes, and such outlets shall not be located in areas open to the public. The Franchising Authority shall take reasonable precautions to prevent any inappropriate use of the Grantee's Cable System or any loss or damage to Grantee's Cable System. The Franchising Authority shall hold the Grantee harmless from any and all liability or claims arising out of the provision and use of Cable Service required by this subsection. The Grantee shall not be required to provide a connection to such buildings where a non-Standard Installation is required, unless the Franchising Authority or building owner/occupant agrees to pay the incremental cost of any necessary Cable System extension and/or non-Standard Installation. If additional outlets of Basic Cable Service are provided to such buildings, the building owner/occupant shall pay the usual installation and service fees associated therewith.

**3.13 Emergency Alert.** Any Emergency Alert System ("EAS") provided by Grantee shall be operated in accordance with FCC regulations. Any use of such EAS by the Franchising Authority will be only in accordance with the applicable state and local plans as approved in accordance with such FCC regulations. Except to the extent expressly prohibited by law, the Franchising Authority will hold the Grantee, its employees, officers and assigns harmless from any claims arising out of use of the EAS, including but not limited to reasonable attorneys' fees and costs.

**3.14 Reimbursement of Costs.** If funds are available to any Person using the Public Way for the purpose of defraying the cost of any of the foregoing, the Franchising Authority shall reimburse the Grantee in the same manner in which other Persons affected by the requirement are reimbursed. If the funds are controlled by another governmental entity, the Franchising Authority shall make application for such funds on behalf of the Grantee.

**3.15 Abandonment.** Notwithstanding any provision in a Franchise, Grantee may not abandon the Cable System or a portion of it without having given three months prior written notice to the

Franchising Authority. Grantee may not abandon the Cable System or a portion of it without compensating the Franchising Authority for damages resulting to it from the abandonment.

**3.16 Compliance with FCC Technical Standards.** The Grantee shall comply with the technical standards for Cable Systems provided in 47 C.F.R. §§ 76.601-76.617, which regulations are incorporated herein by reference as if fully set forth herein. The results of tests required by the FCC must be filed within ten (10) days of the conduct of the tests with the Franchising Authority. The Franchising Authority shall pay for the cost of any special testing requested by the Franchising Authority to determine if the Cable System is in compliance with these technical standards, unless such testing demonstrates non-compliance in which case Grantee shall pay.

**3.17 Public Inspection.** The Grantee shall make available for public inspection: (1) the length and terms of residential subscriber contracts; (2) the current subscriber charges; and (3) the procedure by which subscriber charges are established, unless such provision is contrary to state or federal law.

**3.18 Subscriber Privacy.** No signals of class IV cable communications channel may be transmitted from a Subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the subscriber. The request for permission must be contained in a separate document with a prominent statement that the Subscriber is authorizing the permission in full knowledge of its provisions. The written permission must be for a limited period of time not to exceed one year, which is renewable at the option of the Subscriber. No penalty may be invoked for a Subscriber's failure to provide or renew the authorization. The authorization is revocable at any time by the Subscriber without penalty of any kind. Grantee shall further comply with 47 U.S.C. § 551, which is incorporated herein by reference.

(1) No information or data obtained by monitoring transmission of a signal from a Subscriber terminal, including but not limited to lists of the names and addresses of the Subscribers or lists that identify the viewing habits of Subscribers, may be sold or otherwise made available to any person other than to the company and its employees for internal business use, or to the Subscriber who is the subject of that information, unless the company has received specific written authorization from the Subscriber to make the data available or unless said information is ordered by a court or subpoenaed;

(2) Written permission from the Subscriber must not be required for the systems conducting system wide or individually addressed electronic sweeps for the purpose of verifying system integrity or monitoring for the purpose of billing. Confidentiality of this information is subject to clause A;

(3) For purposes of this provision, a "class IV cable communications channel" means a signaling path provided by a cable communications system to transmit signals of any type from a subscriber terminal to another point in the communications system.

**3.19 Complaint Resolution Procedure.** Grantee shall comply with the customer service standards promulgated by the FCC under 47 C.F.R. § 76.309.

**3.20 Receipt of Complaints.** Grantee shall provide a toll-free or collect telephone number for the reception of complaints to all Subscribers and shall maintain a repair service cable of

responding to Subscriber complaints or requests for service within 24 hours after receipt of the complaint or request.

**3.21 Access Channels.** The Grantee shall provide to each of its Subscribers who receive Cable Service offered on the Cable System, reception on at least one specially designated access channel. Grantee shall establish rules for the administration of the specially designated access channel, unless such channel is administered by the Franchising Authority. Grantee shall make readily available for public use at least the minimal equipment necessary for the production of programming and playback of prerecorded programs for the access channel in Grantee's sole discretion.

#### **SECTION 4** **Regulation by the Franchising Authority**

##### **4.1 Franchise Fee.**

A. The City shall not impose a franchise fee against the Grantee of this Franchise (Mediacom Minnesota LLC) unless and until the City and Grantee mutually agree otherwise.

B. **Limitation on Franchise Fee Actions.** The period of limitation for audit and recovery by the Franchising Authority of any franchise fee payable hereunder shall be three (3) years from the date on which payment by the Grantee is due to the Franchising Authority, after which period any such payment shall be considered final.

**4.2 Audit.** The Franchising Authority shall have the right to audit the Grantee's accounting and financial records solely to calculate the Franchising Authority's franchise fees upon thirty (30) days prior written notice. The Grantee shall file annual reports with the Franchising Authority detailing Gross Revenues and other information the Franchising Authority deems appropriate; provided, however, such information shall be deemed a trade secret under applicable Minnesota law and shall not be disclosed by the Franchising Authority.

**4.3 Rates and Charges.** The Franchising Authority may regulate rates for the provision of Basic Cable Service and equipment only as expressly permitted by federal law.

##### **4.4 Renewal of Franchise.**

A. Any subsequent renewal term of the Franchise Agreement shall be limited to not more than 15 years each. The Franchising Authority and the Grantee agree that any proceedings undertaken by the Franchising Authority that relate to the renewal of the Franchise Agreement shall be governed by and comply with the renewal provisions of federal law.

B. In addition to the procedures set forth in the Cable Act, the Franchising Authority agrees to notify the Grantee of all of its assessments regarding the identity of future cable-related community needs and interests, as well as the past performance of the Grantee under the then current Franchise Agreement term. The Franchising Authority further agrees that such assessments shall be provided to the Grantee promptly so that the Grantee has adequate time to submit a proposal pursuant to the Cable Act and complete renewal of the Franchise Agreement prior to expiration of its term.

C. Notwithstanding anything to the contrary set forth in this subsection 4.3, the Grantee and the Franchising Authority agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment in accordance with the provisions of federal law the Franchising Authority and the Grantee may agree to undertake and finalize informal negotiations regarding renewal of the then current Franchise and the Franchising Authority may grant a renewal thereof.

D. The Grantee and the Franchising Authority consider the terms set forth in this subsection 4.4 to be consistent with the express renewal provisions of the Cable Act.

**4.5 Conditions of Sale.** If a renewal or extension of the Grantee's Franchise Agreement is denied or the Franchise Agreement is lawfully terminated, and the Franchising Authority either lawfully acquires ownership of the Cable System or by its actions lawfully effects a transfer of ownership of the Cable System to another party, any such acquisition or transfer shall be at the price determined pursuant to the provisions set forth in Section 627 of the Cable Act.

The Grantee and the Franchising Authority agree that in the case of a final determination of a lawful revocation of the Franchise Agreement, the Grantee shall be given at least twelve (12) months to effectuate a transfer of its Cable System to a qualified third party. Furthermore, the Grantee shall be authorized to continue to operate pursuant to the terms of its prior Franchise Agreement during this period. If, at the end of that time, the Grantee is unsuccessful in procuring a qualified transferee or assignee of its Cable System which is reasonably acceptable to the Franchising Authority, the Grantee and the Franchising Authority may avail themselves of any rights they may have pursuant to federal or state law. It is further agreed that the Grantee's continued operation of the Cable System during the twelve (12) month period shall not be deemed to be a waiver, nor an extinguishment of, any rights of either the Franchising Authority or the Grantee.

**4.6 Franchise Transfer.** No sale or transfer of this Franchise Agreement or sale or transfer of stock so as to create a new controlling interest under Minn. Stat. §238.083, shall take place without the written approval of the Franchising Authority, which approval shall not be unreasonably withheld. The Grantee's right, title, or interest in the Franchise Agreement shall not be sold, transferred, assigned, or otherwise encumbered, other than to an entity controlling, controlled by, or under common control with the Grantee, without prior written notice to the Franchising Authority. No such notice shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise Agreement or Cable System in order to secure indebtedness. Pursuant to Minn. Stat. §238.084, Subd. 1(y), if the Franchise Agreement is transferred or sold by Grantee, the Franchising Authority shall have the right to purchase the Cable System. City shall be deemed to have waived its right to purchase the System under this section in the following circumstances:

- (i) If it does not indicate to Grantee in writing, within thirty (30) days of notice of a proposed sale or assignment, its intention to exercise its right of purchase; or
- (ii) It approves the assignment or sale of the Franchise as provided within this section.

**SECTION 5**  
**Books and Records**

The Grantee agrees that the Franchising Authority, upon thirty (30) days written notice to the Grantee and no more than once annually may review such of its books and records at the Grantee's business office, during normal business hours and on a nondisruptive basis, as is reasonably necessary to ensure compliance with the terms of this Franchise Agreement. Such notice shall specifically reference the subsection of the Franchise Agreement that is under review so that the Grantee may organize the necessary books and records for easy access by the Franchising Authority. Alternatively, if the books and records are not easily accessible at the local office of the Grantee, the Grantee may, at its sole option, choose to pay the reasonable travel costs of the Franchising Authority's representative to view the books and records at the appropriate location. The Grantee shall not be required to maintain any books and records for Franchise Agreement compliance purposes longer than three (3) years. Notwithstanding anything to the contrary set forth herein, the Grantee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature, nor disclose books and records of any affiliate which is not providing Cable Service in the Service Area. The Franchising Authority agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof. The Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act.

**SECTION 6**  
**Insurance and Indemnification**

**6.1 Indemnification.** During the term of the Franchise Agreement, the Grantee shall indemnify, defend and hold harmless the Franchising Authority, its officers, boards, commissions, councils, elected officials, agents and employees (collectively the "Indemnitees") from and against resulting from property damage or bodily injury (including accidental death) that arise out of the Grantee's construction, operation, maintenance or removal of the Cable System in the Service Area provided that the Franchising Authority shall give Grantee prompt written notice of its obligation to indemnify the Franchising Authority within a reasonable time of receipt of a claim or action pursuant to this subsection.

Notwithstanding the foregoing, the Grantee shall not indemnify the Franchising Authority for any damages, liability or claims resulting solely from the willful misconduct or negligence of the Indemnitees.

**6.2 Insurance.** The Grantee shall maintain insurance in full force and effect, at its own cost and expense, during the term of the Franchise Agreement. The Franchising Authority shall be designated as an additional insured and such insurance shall be noncancellable except upon thirty (30) days prior written notice to the Franchising Authority. Upon written request, the Grantee shall provide a Certificate of Insurance showing evidence of the coverage required by this subsection.

**6.3 Security.** The Grantee at the time the Franchise Agreement becomes effective and thereafter until the Grantee has liquidated all of its obligation with the franchising

authority, shall furnish a performance bond, certificate of deposit, or other type of instrument in the amount of \$10,000 in order to compensate Franchising Authority for Grantee's non-performance. The Franchising Authority may, from year to year and in its sole discretion, reduce the amount of the performance bond or instrument.

## **SECTION 7**

### **Enforcement and Termination of Franchise**

**7.1 Franchise Termination.** The Franchising Authority has the right to terminate and cancel the Franchise Agreement and the rights and privileges of the Franchise Agreement if the Grantee substantially violates a provision of the Franchise Agreement, attempts to evade the provisions of the Franchise Agreement, or practices fraud or deceit upon the Franchising Authority. The Franchising Authority shall provide the Grantee with a written notice of the cause for termination and its intention to terminate the Franchise Agreement and shall allow the Grantee a minimum of 30 days after service of the notice in which to correct the violation. The Grantee must be provided with an opportunity to be heard at a public hearing before the governing body of the Franchising Authority before the termination of the Franchise Agreement.

**7.2 The Grantee's Right to Cure or Respond.** The Grantee shall have thirty (30) days from receipt of the notice described in subsection 7.1: (A) to respond to the Franchising Authority, contesting the assertion of such noncompliance, or (B) to cure such default, or (C) in the event that, by the nature of such default, it cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the Franchising Authority of the steps being taken and the projected date that they will be completed.

**7.3 Public Hearing.** In the event that the Grantee fails to respond to the notice described in subsection 7.1 pursuant to the procedures set forth in subsection 7.2, or in the event that the alleged default is not remedied within thirty (30) days or the date projected pursuant to 7.2(C) above, if it intends to continue its investigation into the default, then the Franchising Authority shall schedule a public hearing. The Franchising Authority shall provide the Grantee at least ten (10) days prior written notice of such hearing, which specifies the time, place and purpose of such hearing, and provide the Grantee the opportunity to be heard.

**7.4 Enforcement.** Subject to applicable federal and state law, in the event the Franchising Authority, after the hearing set forth in subsection 7.3, determines that the Grantee is in material default of any provision of the Franchise Agreement, the Franchising Authority may:

A. Commence an action at law for monetary damages or seek other equitable relief;  
or

B. In the case of repeated or ongoing substantial non-compliance with a material term or terms of the Franchise Agreement, seek to revoke the Franchise Agreement in accordance with subsection 7.5.

**7.5 Revocation.** Should the Franchising Authority seek to revoke the Franchise Agreement after following the procedures set forth in subsections 7.1-7.4 above, the Franchising Authority shall give written notice to the Grantee of its intent. The notice shall set forth the exact nature of the repeated or ongoing substantial noncompliance with a material term or terms of the Franchise Agreement. The Grantee shall have ninety (90) days from such notice to object in writing and to state its reasons for such objection. In the event the Franchising Authority has not received a satisfactory response from the Grantee, it may then seek termination of the Franchise Agreement at a public hearing. The Franchising Authority shall cause to be served upon the

Grantee, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise Agreement.

At the designated hearing, Grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce relevant evidence, to require the production of evidence, to compel the relevant testimony of the officials, agents, employees or consultants of the Franchising Authority, to compel the testimony of other persons as permitted by law, and to question witnesses. A complete verbatim record and transcript shall be made of such hearing.

Following the hearing, the Franchising Authority shall determine whether or not the Franchise Agreement shall be revoked. If the Franchising Authority determines that the Franchise Agreement shall be revoked, the Franchising Authority shall promptly provide Grantee with its decision in writing. The Grantee may appeal such determination of the Franchising Authority to an appropriate court which shall have the power to review the decision of the Franchising Authority de novo. Grantee shall be entitled to such relief as the court finds appropriate. Such appeal must be taken within sixty (60) days of Grantee's receipt of the determination of the Franchising Authority.

The Franchising Authority may, at its sole discretion, take any lawful action which it deems appropriate to enforce the Franchising Authority's rights under the Franchise Agreement in lieu of revocation.

**7.6 Force Majeure.** The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise Agreement, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control. This provision includes work delays caused by waiting for utility providers to service or monitor their utility poles to which the Grantee's Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

Furthermore, the parties hereby agree that it is not the Franchising Authority's intention to subject the Grantee to penalties, fines, forfeitures or revocation of the Franchise Agreement for violations of the Franchise Agreement where the violation was a good faith error that resulted in no or minimal negative impact on the Subscribers within the Service Area, or where strict performance would result in practical difficulties and hardship to the Grantee which outweigh the benefit to be derived by the Franchising Authority and/or Subscribers.

**7.7 Removal of Facilities.** Upon termination or forfeiture of the Franchise Agreement, unless otherwise required by applicable law, the Grantee shall remove its cable, wires, and appliances from the streets, alleys, and other public places within the Service Area if the Franchising Authority so requests; provided, however, that if Grantee is providing services other than Cable Services or pursuant to applicable law, City shall not require the removal of the System. In the event the Grantee fails to remove its cable, wires, and appliances from the streets, alleys, and other public places within the Service Area, the Grantee will be subject to the procedures of applicable local law.

**SECTION 8**  
**Miscellaneous Provisions**

**8.1 Actions of Parties.** In any action by the Franchising Authority or the Grantee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

**8.2 Entire Agreement.** This Franchise Agreement constitutes the entire agreement between the Grantee and the Franchising Authority and supersedes all other prior understandings and agreements oral or written. Any amendments to this Franchise Agreement shall be mutually agreed to in writing by the parties.

**8.3 Reservation of Rights.** Acceptance of the terms and conditions of this Franchise Agreement will not constitute, or be deemed to constitute, a waiver, either expressly or impliedly, by Grantee of any constitutional or legal right which it may have or may be determined to have, either by subsequent legislation or court decisions. The Franchising Authority acknowledges that Grantee reserves all of its rights under applicable Federal and State Constitutions and laws.

**8.4 Notice.** Unless expressly otherwise agreed between the parties, every notice or response required by this Franchise Agreement to be served upon the Franchising Authority or the Grantee shall be in writing, and shall be deemed to have been duly given to the required party when placed in a properly sealed and correctly addressed envelope: a) upon receipt when hand delivered with receipt/acknowledgment, b) upon receipt when sent certified, registered mail, c) within five (5) business days after having been posted in the regular mail or d) or the next business day if sent by express mail or overnight air courier.

The notices or responses to the Franchising Authority shall be addressed as follows:

City of Ivanhoe  
City Administrator  
PO Box 54  
Ivanhoe, MN 56142-0054

The notices or responses to the Grantee shall be addressed as follows:

Mediacom Minnesota LLC  
Attn: Legal Department  
One Mediacom Way  
Mediacom Park, NY 10918

With a copy to:

Mediacom Minnesota LLC  
Attn: Regional Vice President  
1504 2<sup>nd</sup> Street SE  
Waseca, MN 56093

The Franchising Authority and the Grantee may designate such other address or addresses from time to time by giving notice to the other in the manner provided for in this subsection.

**8.5 Franchise Administration.** The Franchising Authority shall notify Grantee of the office or officer of the Franchising Authority responsible for the continuing administration of the Franchise Agreement.

**8.6 Descriptive Headings.** The captions to Sections and subsections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.

**8.7 Severability.** If any Section, subsection, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other Section, subsection, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise Agreement.

**8.8 Franchise Term and Effective Date.** The Effective Date of this Franchise is April 1, 2019. The parties agree that, during the time between final execution of this Franchise and the Effective Date, the terms and conditions of the previous franchise agreement will govern. This Franchise shall be for a term of fifteen (15) years from such Effective Date and shall expire on April 1, 2034.

Considered and approved this 11<sup>th</sup> day of March, 2019.

City of Ivanhoe, MN

Signature: Dennis A Klingbilo

Printed Name: Dennis A Klingbilo

Title: Mayor

Mediacom Minnesota LLC

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_