DANGEROUS WEAPONS, EXPLOSIVES, INFLAMMABLES

100 FIREARMS AND OTHER DANGEROUS WEAPONS

100.01 Unlawful to Discharge.
It shall be unlawful to discharge any firearms within the City of Wheaton, except in such places as may be designated by the City Council as rifle ranges or trap-shooting grounds.

100.02 Definition of "Firearms".
The term "firearms" as used herein shall include all guns, pistols, rifles, revolvers, paint guns, CO2 propelled device or other similar devices or weapons.

100.03 Peace Officers Exempted.
The prohibitions contained herein relative to "firearms" shall not apply to duly constituted peace officers in the discharge of their duties.

100.04 Air Rifles, B-B Guns, Pellet Guns, Sling Shots, Bows and Arrows, Cross-bows, Paint-Gun, etc. or any CO2 propelled device.
No person shall use, possess or discharge any air rifle, B-B gun, pellet gun, sling shot, bow and arrow, cross-bow, paint gun or any other CO2 propelled device or other similar weapon within the limits of the city of Wheaton, except in such places as may be designated by the City council as rifle ranges or archery ranges or on the owner's private property.

100.05 Penalty.
Violation of any provision of this ordinance shall be a misdemeanor punishable pursuant to W.M.C. 005.05.

DANGEROUS WEAPONS, EXPLOSIVES, INFLAMMABLES

105 FIRE PREVENTION CODE

105.01 Adoption of Fire Prevention Code.
The 1982 Edition of the UNIFORM FIRE PREVENTION CODE as amended is hereby adopted as the uniform fire code of the City of Wheaton for the purpose of prescribing regulations governing conditions hazardous to life and property from fire or explosion. Every provision contained in this code is hereby adopted and made a part of this ordinance as if fully set forth herein, except such portions as are hereinafter deleted, modified or amended.

105.02 Enforcement.
The code hereby adopted shall be enforced by the Chief of the Fire Department.

105.03 Definition.
Wherever the word "Municipality" is used in the code hereby adopted, it shall be held to mean the City of Wheaton, Minnesota.

105.04 Penalties.
Any person who shall violate any of the provisions of the code hereby adopted or fail to comply therewith, or who shall violate or fail to comply with any order made thereunder, or who shall build in violation of any detailed statement of specifications or plans submitted and approved thereunder, or any certificate or permit issued thereunder, and from which no appeal has been taken, or who shall fail to comply with such an order as affirmed or modified by the City Council or by a court of competent jurisdiction, within the time fixed herein, shall severally for each and every such violation and noncompliance respectively, be guilty of a misdemeanor, punishable pursuant to W.M.C. 005.05.

The imposition of one penalty for any violation shall not excuse the violation or permit it to continue; and all such persons shall be required to correct or remedy such violations or defects within a reasonable time; and when not otherwise specified, each ten days that prohibited conditions are maintained shall constitute a separate offense. The application of the above penalty shall not be held to prevent the enforced removal of prohibited conditions.

105.05 Validity
Should any section, paragraph, sentence or word of this ordinance or of the code hereby adopted be declared for any reason to be invalid, it is the intent of the enacting body that it would have passed all other portions of this ordinance independent of the elimination herefrom of any such portion as may be declared invalid.

DANGEROUS WEAPONS, EXPLOSIVES, INFLAMMABLES

110 BOMB THREATS

110.01 Bomb Threats.
It shall be unlawful for anyone:

a. as a hoax, to communicate or cause to be communicated the fact that a bomb or any other explosive device has been placed in any building or in any location other than a building;
b. as a hoax, to threaten to bomb any persons, place or building;
c. to knowingly permit any telephone or other means of communication under his control to be used for any purposes prohibited by this section;
d. as a hoax, to place or cause to be placed in any location, any article, constructed or placed with intent to give the impression that said article possesses explosive capability.

110.02 Penalty.
Any person who shall violate any provision of this ordinance shall be guilty of a misdemeanor and shall be punished in accordance with W.M.C. 005.05.

ANIMALS

150 DOGS, CATS and COMPANION ANIMALS

150.01 Definitions.

The following definitions shall apply unless specifically stated otherwise in this ordinance:

Subsection 1. Dog, cat and companion animals shall mean any dog or cat over the age of six (6) months of age of either sex;

Subsection 2. Owner shall mean any person who keeps, harbors, possesses, owns, cares, or has companion aid with or for a dog or cat;

Subsection 3. Any dog or cat shall be deemed running at large when such dog or cat is not on a leash which leash is controlled by a person. No leashed dog or cat shall be able to reach a point 15 feet from street curb. When such dog or cat is not securely confined, fenced, penned, or otherwise adequately contained on the premises of the owner or keeper.

Subsection 4. Law enforcement officer shall include any designated employee of the City of Wheaton as well as recognized law officers of the County of Traverse or the State of Minnesota.

Subsection 5. The definition of "a dangerous dog" and "potentially dangerous dog" as defined in Minnesota Statutes #347.50, as amended, are incorporated herein.

150.02 Running at Large Prohibited.

No dog or cat shall at any time, be permitted to run at large within the limits of this city. Any dog or cat impounded in violation of this section shall be treated and the owner thereof charged with a violation of this ordinance. No leashed dog or cat shall be able to reach a point 15 feet from street curb.

150.03 Barking or Howling as a Nuisance.

Any dog or cat within this city, which by continual barking, howling or yelping shall annoy the neighborhood, is hereby declared to be a public nuisance, and any owner or keeper of such dog or cat, upon being notified by an law enforcement officer, shall cause such dog or cat to cease & desist or shall so confine such dog or cat so as to effectively terminate the annoyance.

150.04 Vicious Dogs or Cats.

It shall be unlawful for any person to keep and harbor, within this city, any dangerous or potentially dangerous dog or cat, knowing the same to be dangerous or vicious.

150.05 Impounding of Dogs or Cats.

Subsection 1. **General Authorization**. All law enforcement officers shall be authorized and directed to impound any dog or cat in violation of this ordinance in such a manner as humane as possible but with due regard for the dangerous propensities of such animal.

Subsection 2. **Suspected Rabies Carrier**. Any dog or cat which has bitten or is

AMENDMENT TO ORDINANCE NO. 150.03

AN ORDINANCE DEALING WITH ANIMAL NUISANCE IN THE CITY OF WHEATON

Findings.

1. Whereas the Wheaton City Council has received numerous complaints about dogs barking excessively in the City of Wheaton.
2. Whereas the existing Code of Ordinance contains a provision regulating barking dogs, but the Wheaton City Council does not believe it is sufficiently strong enough to remedy the issue.
3. Whereas, the Wheaton City Council believes it is necessary to modify the existing Ordinance in order to provide stronger enforcement provisions regulating animal nuisances within the City of Wheaton.

THE CITY COUNCIL OF THE CITY OF WHEATON ORDAINS:

Section 1. That Ordinance No. 150.03 of the Code of Ordinance for the City of Wheaton is hereby amended, and shall read as follows:

"150.03. Animal Nuisance.

Subsection 1. Any dog or cat within this city, which by continual barking, howling or yelping shall annoy at least one neighbor is hereby declared to be a public nuisance, and any owner or keeper of such dog or cat, upon being notified by a law enforcement officer, shall cause such dog or cat to cease & desist or shall so confine such dog or cat so as to effectively terminate the annoyance.

Subsection 2. The first two times that a law enforcement officer is called to a residence concerning a barking, howling, or yelping dog or cat shall result in a verbal warning to the animal's owner or caretaker by the law enforcement officer. For each time thereafter, the animal's owner or caretaker shall be charged with a misdemeanor offense."

PASSED AND ADOPTED this 27th day of May, 2021.

WHEATON CITY COUNCIL

Leonard Zimmel

Leonard Zimmel, Mayor

ATTEST:

Amy Olson

Amy Olson, City Administrator

believed to have bitten a human being shall be immediately impounded by the city police and kept at such location and in such manner, as this council shall from time to time designate for a period not to exceed 18 days. It shall be the duty of the Chief of Police to see that such impounded dog or cat is observed by appropriate health authorities so as to determine if said dog or cat is infected with rabies. If it is determined that said dog or cat is so infected, it shall be destroyed and such determination is not reviewable. Further any dog or cat which shall give evidence of sickness or disease or is believed to have bitten by or exposed to a rabid animal may be similarly impounded for a period not to exceed 18 days except that such dog or cat shall be released sooner upon proof of rabies immunization within the preceding two year period and after "booster" injections have been given at owner's expense by a veterinarian licensed in Minnesota.

Subsection 3. **Notice of Impounding**. Upon impounding any dog or cat for any reason the law enforcement officer so acting shall direct the city clerk to post immediately a notice at the City Hall stating the description of said dog or cat, the date of said impounding and the date of posting said notice.

Subsection 4. **Release of Certain Dogs**. Any dog or cat impounded under the provisions of this ordinance, other than under Subsection 2 above shall be held for three days after notice has been posted as provided in Subsection 3 above unless sooner claimed by said owner and upon compliance with all licensing requirements and upon payment of all impounding fees and fines. If said dog or cat is not claimed or the owner found within such period of time, said dog or cat shall be destroyed, provided, however, that any person may claim said dog or cat at the expiration of said above time limit by complying with all licensing requirements and by payment of all impounding fees and fines assessed for violation of this ordinance.

Subsection 5. **Vicious Dogs or Cats**

If any dog or cat is observed in violation of this ordinance and cannotbe safely impounded, said law enforcement officer shall be authorized and directed to destroy said animal and any such decision shall not be reviewable.

150.06 Penalty.

Every person convicted of a violation of any provision of this ordinance shall be guilty of a misdemeanor and shall be punished by a fine not to exceed $700.00 or by imprisonment for not to exceed 90 days, or both, and in either event at the court's discretion by assessing costs of prosecution. Impounder's fees shall be in addition to the penalty provided herein.

ANIMALS

155 DOMESTIC ANIMALS RUNNING AT LARGE

155.01 Running at large prohibited.
No cattle, horse, mule, sheep, swine, or poultry shall be permitted to run at large within the City of Wheaton, Minnesota.

155.02 Restraining such animals; conditions of release.
If any cattle, horse, mule, swine, sheep or poultry shall be found running at large within the limits of the City of Wheaton, Minnesota, each and every such animal or fowl so found may be restrained by any person, and when restrained may be kept in any place of safe keeping until such restrained animal or animals, fowl or fowls, can be properly placed in the charge of said pound-master and shall not be released therefrom until the owner or claimant shall have paid the said pound-master.

155.03 Duties of Pound-master.
It shall be the duty of the pound master to provide and keep in suitable repair a proper place wherein to keep securely all animals or fowls impounded, and to provide them with proper sustenance while remaining in his charge.

155.04 Public Auction.
And it shall be lawful for the city pound-master, after any animals or fowl have been impounded for five days, and have not been reclaimed, to sell the same at public auction or venue, on giving at least three days notice by posting three notices of sale in three of the most conspicuous places in the City of Wheaton, Minnesota, stating the time when and the place where each sale will be held, and particularly describing in such notice the animals or animals, fowl or fowls, to be sold; providing that any owner or claimant shall have the right to redeem any impounded animal or fowl before the sale thereof, by paying to said pound-master all lawful costs and charges.

155.05 Accounting by Pound-master.
It shall be the duty of the pound-master to render to the City Council a statement at the end of each month, of all fees or moneys collected by him under the provisions of this title, and he shall at the time of rendering said statement to the council, pay over to the city clerk/treasurer all sums due said city, under the provisions of this act, including the amounts received from the sale of any animals or fowls, after having first deducted his lawful fee therefrom.

155.06 Breaking into pound.
Any person or persons who shall break open or attempt to break or open, or in any way directly or indirectly, aid or assist in breaking open any city pound established within the proper limits of the City of Wheaton, Minnesota, shall upon conviction thereof, be punished pursuant to W.M.C. 005.05.

155.07 Appointment of pound-master; vacancies.

Whenever there is a vacancy in the office of the pound-master, the City Police Department shall act as such until such vacancy has been filled by an appointment of the City Council. The City Council shall each year at its first meeting after the annual election, appoint a city pound-master who shall hold office at its pleasure. The duties of the pound-master are defined by the provisions of this ordinance. (Derivation 27(11) no date indicated).

ANIMALS

156 KEEPING OF DOMESTIC ANIMALS

156.01
That no person, persons, corporation or association shall keep any horses, mules, cattle, sheep, goats, hogs, pigs or poultry within the platted portion of the City of Wheaton, or within 200 feet thereof. Exception permits may be issued.

156.02
Violation of any provision of this ordinance shall be a misdemeanor punishable pursuant to W.M.C. 005.05.

CABLE TELEVISION

181 FRANCHISE AGREEMENT

This Franchise Agreement is between the City of Wheaton, Minnesota 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.

181.01 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 Communications Act of 1934, as amended by the Cable Communications Policy Act of 1984, Pub. L. No. 98-549, 98 Stat. 2779 (1984) (codified at 47 U.S.C. §§ 521-611 (1982 & Supp. V 1987)), the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385 and the Telecommunications Act of 1996, Pub. L. No. 104-458 and as the same may, from time to time, be 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 Cable Service Area.

E. "<u>FCC</u>" means Federal Communications Commission or successor governmental entity thereto.

F. "<u>Franchise</u>" 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. "<u>Franchising Authority</u>" means the City of Wheaton.

H. "<u>Grantee</u>" means Mediacom Minnesota LLC, or the lawful successor, transferee, or assignee thereof.

I. "Gross Revenues" means revenues derived from Cable Services received by Grantee from Subscribers in the Service Area; provided, however, that Gross Revenues shall 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 "<u>Multichannel Video Program Distributor or MVPD</u>" 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. "<u>Open Video Services or OVS</u>" means any video programming ~~S~~ervices 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. "<u>Person</u>" means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity.

M. "<u>Public Way</u>" 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.

181.02 Grant of Franchise

A. **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.

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

C. Nonexclusive Franchise. This Franchise Agreement shall be nonexclusive.

D. **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.

E. **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.

1. 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.

2. 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.

F. **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.

181.03 Construction and Operation of Cable System

A. **Compliance with Code**. The Cable 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.

B. **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.

C.

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.

D. **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.

E. **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.

F. **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.

G. **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.

H. **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.

I. **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.

J. **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 Cable 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.

K. **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 181.03 paragraph A 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.

L. **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. Falk Park Lodge is owned by the City of Wheaton and will also get free video service. 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.

M. **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.

N. **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.

O. **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.

P. **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.

Q. **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.

R. **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~~ 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.

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

T. **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.

U. **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.

181.04 Regulation by the Franchising Authority

A. **Franchise Fee**.

1. The Grantee shall not pay to the Franchising Authority a franchise fee percent of annual Gross Revenues (as defined in subsection 1.1 of this Franchise Agreement). The city may implement up to a five (5%) fee at their discretion. Written request must be sent to Mediacom 90 days before the fee is implemented. In accordance with the Cable Act, the twelve (12) month period applicable under the Franchise for the computation of the franchise fee shall be a calendar year. The franchise fee payment shall be due annually and payable within 90 days after the close of the preceding calendar year. Each payment shall be accompanied by a brief report prepared by a representative of the Grantee showing the basis for the computation.

2. 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.

B. **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.

C. **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.

D. **Renewal of Franchise**.

1. 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.

2. 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.

3. 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.

4. 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.

E. **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.

1. 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.

F. 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 Cable System under this section in the following circumstances:

1. 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

2. It approves the assignment or sale of the Franchise as provided within this section.

181.05 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 non-disruptive 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.

184.06 Insurance and Indemnification

A. **Insurance.** The Grantee shall maintain insurance as listed below 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 (excepting for Workers' Compensation) and such insurance shall not be cancelled, materially modified, or not renewed 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.
   1. Insurance for liability for damage to property, which shall be no less than One Million Dollars ($1,000,000.00) as to any one occurrence?
   2. Insurance for liability for injury or death to any person, which shall be no less than One Million Dollars ($1,000,000.00) as to any one occurrence?
   3. Insurance for excess liability, which shall be Twenty-Five Million Dollars ($25,000,000.00) in umbrella form?
   4. Insurance against all claims arising out of the operation of motor vehicles and general tort or contract liability, which shall be in the amount of One Million Dollars ($1,000,000.00)?
   5. Workers' Compensation Insurance which meets all legal requirements of the State of Minnesota.

B. **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 any injuries, claims, demands, judgments, damages, losses and expenses, including reasonable attorney's fees and costs of suit or defense, 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.

   1. 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.

C. **Municipal Immunities**. The provisions of this section, including the indemnity provisions in 186.06, paragraph B and the procurement by the Grantee of insurance policies meeting the requirements of this section, shall not be interpreted or construed to effect any waiver, suspension, release or alteration of or to any and all immunity or other immunities or damage limits as may be available to the Franchising Authority by law.

D. **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.

181.07 Enforcement and Termination of Franchise

A. **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.

B. **The Grantee's Right to Cure or Respond**. The Grantee shall have thirty (30) days from receipt of the notice described in subsection 181.07 paragraph A: (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.

C. **Public Hearing**. In the event that the Grantee fails to respond to the notice described in subsection pursuant to the procedures set forth in subsection 181.07, or in the event that the alleged default is not remedied within thirty (30) days or the date projected pursuant to 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.

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

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

2. 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 paragraph E.

E. **Revocation**. Should the Franchising Authority seek to revoke the Franchise Agreement after following the procedures set forth in subsections A-D 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.

Section 6: Sewer Service Charges and the Sewer Service Fund will be administrated in accordance with the provisions of Article V of this Ordinance.

Article III: Determination of Sewer Service Charges

Section 1: Users of the City of Wheaton wastewater treatment works shall be identified as belonging to one of the following user classes:

1. Residential
2. Commercial
3. Industrial
4. Institutional
5. Governmental

The allocation of users to these categories for the purpose of assessing User Charges and Debt Service Charges shall be the responsibility of the City Clerk. Allocation of users to user classes shall be based on the substantive intent of the definitions of these classes contained herein.

Section 2: Each user shall pay operation, maintenance, and replacement costs in proportion to the user's proportionate contribution of wastewater flows and loadings to the treatment plant, with the minimum rate for loadings of BOD and TSS being the rate established for concentrations of 222 mg/l BOD and 261 mg/l TSS (i.e. Normal Domestic Strength Wastewater).

Those "industrial users" discharging segregated "Normal Domestic Strength Wastewater" only, can be classified as "commercial users" for the purpose of rate determination.

Section 3: The charges assessed residential users and those users of other classes discharging "normal domestic strength wastewater" shall be established proportionately according to billable wastewater volume. Billable wastewater volume shall be calculated as follows:

A. Residential Users:
Billable wastewater volume for residential users shall be calculated on the basis of metered water usage. The per month payable wastewater volume shall be equal to monthly metered water usage.

B. Non-Residential Users
The billable wastewater volume of non-residential users may be determined in the same manner as for residential users. Except that at if the City determines that there are significant seasonal variations in the metered water usage of non-residential users resulting in a proportionate increase or decrease in wastewater volume; then billable wastewater volume shall be:

1. Calculated of the basis of monthly metered water usage as recorded throughout the year, and
2. Calculated on the basis of wastewater flow meters.

The City may, at its discretion, require non-residential users to install such additional water meters or wastewater flow meters as may be necessary to determine billable wastewater volume.

Section 4: Determination of User Charges

User charges for normal domestic strength users shall be determined as follows:

A. Calculation of unit cost for treatment of normal domestic strength wastewater:

$$Uomr = \frac{Comp}{Tbwv}$$

Where: Uomr = Unit cost for Operation, Maintenance & Replacement in S/Kgal.
Comr = Total annual OM+R costs
Tbwv = Total annual billable wastewater volume in kgall.

B. Calculation of user charge:

$$Uc = Uomr \times bwv$$

Where: Uc = User Charge
Uomr = Unit cost for operation, maintenance & replacement in S/Kgal.
bwv = Billable Wastewater Volume of a particular user in in kgal.

NOTE: Provision for the recovery of local construction costs shall be included in the Sewer Rate Ordinance and accompanying Sewer Service Charge System. Federal and State regulations do not require that local construction costs be recovered proportionately, (as is the case with operation, maintenance and replacement costs) but only that the method of recovery be provided for. Consequently, the City may employ a variety, or a combination of methods to recover such costs.

The following alternatives demonstrate provision for such costs in the Sewer Rate Ordinance, and can be employed to assist in the development of a suitable Ordinance. These alternatives are offered as suggestions only; neither the EPA nor the MOCA endorse a particular approach.

Section 5: Recovery of Local Construction Costs
Local construction costs of the wastewater treatment facility will be recovered through a Debt Service Charge calculated in a manner consistent with the User Charge, as follows:

A. Calculation of unit cost for debt service

Uds = $\frac{cds}{udwv}$

Where: Uds = unit cost for debt service in S/Kgal.
Cds = cost of annual debt service
Tbwv = total annual billable wastewater volume in kgal

B. Calculation of Debt Service Charge:

Dc = Uds x bwv

Where: Dc = Debt Service Charge
Uds = Unit cost for debt service in S/Kgal
Bmv = Billable wastewater, volume of a particular user in kgal.

Section 6: Determination of Sewer Service Charges
The Sewer Service Charge for a particular connection shall be determined as follows:

SSC = Uc & Dc

Where: SSC = Sewer Service Charge
Uc = User Charge
Dc = Debt Service Charge

Section 7: The Sewer Service charges established in this Ordinance shall not prevent the assessment of additional charges to users who discharge wastes with concentrations greater than Normal Domestic Strength or wastes of unusual character, or contractual agreements with such users, as long as the following conditions are met:

1. The user pays operation, maintenance, and replacement costs in proportion to the user's proportionate contribution of wastewater flows and loadings to the treatment plant, and no user is charged at a rate less than that of "Normal Domestic Strength Wastewater"
2. The measurements of such wastes are conducted according to the latest edition of Standard Methods for the Examination of Wastewater and Wastewater.

A study of unit costs of collection and treatment processes attributable to Flow, BOD , TSS and other significant loadings shall be developed for determining the proportionate allocation of costs to flows and loadings for users discharging wastes of greater than normal domestic strength or wastes of unusual character.

Article IV. Sewer Service Fund

Section 1. The City of Wheaton hereby establishes a "Sewer Service Fund" as an income fund to receive all revenues generated by the Sewer Service Charge System, and all other income dedicated to the operation, maintenance, replacement and construction of the wastewater treatment works, including taxes, special charges, fees, and assessments intended to retire construction debt.

The City also establishes the following accounts as income and expenditure accounts within the Sewer Service Fund:

1. Operation and maintenance account
2. Equipment and replacement account
3. Debt Retirement Account

Section 2. All revenue generated by the sewer service charge system, and all other income pertinent to the treatment system, including taxes and special assessments dedicated to retire construction debt, shall be held by the Clerk separate and apart from all other funds of the City. Funds received by the Sewer Service Fund shall be transferred to the "operation and maintenance account", the equipment replacement account, and the debit retirement account, in accordance with State and Federal regulations and the provisions of this ordinance.

Section 3: Revenue generated by the Sewer Service charge system sufficient to insure adequate replacement throughout the design of useful life, whichever is longer, of the wastewater facility shall be held separate and apart in the equipment replacement account and dedicated to affecting replacement costs. Interest income generated by the equipment replacement account shall remain in the equipment replacement account.

Section 4: Revenue generated by the Sewer Service Charge System sufficient for operation and maintenance shall be held separate and apart in the operation and maintenance account.

Article V: Administration

The Sewer Service Charge System and Sewer Service Fund shall be administrated according to the following provisions:

Section 1: The City Clerk shall maintain a proper system of accounts suitable for determining the operation and maintenance, equipment replacement and debt retirement costs of the treatment works, and shall furnish the City council with a report of such costs annually in April.

The City Council shall annually determine whether or not sufficient revenue is being generated for the effective operation, maintenance, replacement and management of the treatment works, and whether sufficient revenue is being generated for debt retirement. The Council will also determine whether the user charges are distributed proportionately to each user in accordance with Article II, Section 2 of this Ordinance and Section 204(b)(2)(A) of the Federal Water Pollution Control Act, as amended.

The City shall thereafter, but not later than the end of the year, reassess, and as necessary revise the sewer service charge system then in use to insure the proportionality of the user charges and to insure the sufficiency of funds to maintain the capacity and performance to which the facilities were constructed, and to retire the construction debt.

Section 2: In accordance with Federal and State requirements each user will be notified annually in conjunction with a regular billing of that portion of the Sewer Service Charge System then in use to insure the proportionality of the user charges and to insure the sufficiency of funds to maintain the capacity and performance to which the facilities were constructed, and to retire the construction debt.

Section 3: In accordance with Federal and State requirements, the City Clerk shall be responsible for maintaining all records necessary to document compliance with the Sewer Service Charge System adopted.

Section 4: Bills rendered for Sewer Service Charges shall follow the procedures outlined in Ordinance No. 405.05 of the Wheaton Municipal Code.

Section 5: The owner of the premises, shall be liable to pay for the service to such premises, and the service is furnished to the premises by the City only upon the condition that the owner of the premises is liable therefore to the City.

Section 6: Any additional costs caused by discharges to the treatment works of toxics or other incompatible wastes, including the cost of restoring wastewater treatment services, clean up and restoration of the receiving waters and environs, and sludge disposal, shall be borne by the discharger(s) of said wastes, at no expense to the City.

Article VI. Penalties

Section 1: Each and every sewer service charge levied by and pursuant to this Ordinance is hereby made a lien upon the lot or premises served, and all such charges which are, on October 20 of each year, past due and delinquent, may be certified to the County Auditor as taxes or assessments on the real estate. Nothing in this Ordinance shall be held or construed as in any way stopping or interfering with the right of the City to levy taxes or assessments against any premises affected by any delinquent or past due water service charges.

Section 2: As an alternative to levying a lien, the City may, at it's discretion, file suit in a civil action to collect such amounts as are delinquent and due against the occupant, owner, or user, of the real estate, and shall collect as well all attorney's fees incurred by the city in filing the civil action. Such attorney's fees shall be fixed by order of the court.

Section 3: In addition to all penalties and costs attributable and chargeable to recording notices of the lien or filing a civil action, the owner or user of the real estate being serviced by the treatment works shall be liable for interest upon all unpaid balances at the rate of 18% per annum.

Article VII: Severability and Validity

Section 1: If any section or subdivisions of this ordinance shall be held invalid, the invalidity thereof shall not affect the validity of the other provisions of this ordinance, which shall continue in full force and effect.

Section 2: The sewer service charges system shall take precedence over any terms or conditions of agreements of agreements or contracts which are inconsistent with the requirements of section 204(b)(1)(A) of the Act and Federal regulation 40 CFR (Code of Federal Regulations) 35.2140 of the Environmental Protection Agency's grant regulations.

Section 3: This ordinance shall be in full force and take effect from and after it's passage and approval and publication as provided by law.

Section 4: Accepted by Wheaton City council on November 17, 1988.

1. 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.

F. **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.

1. 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.

G. **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 Cable 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.

181.08 Miscellaneous Provisions

A. **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.

B. **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.

C. **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.

D. **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 Wheaton
Kris Krenz, City
Administrator
PO Box 868
Wheaton, MN 56296

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 2nd 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.

E. **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.

F. **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.

G. **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.

H. **Franchise Term and Effective Date**. The Effective Date of this Franchise Agreement is the date of final adoption by the Franchising Authority as set forth below subject to Grantee's acceptance by countersigning where indicated below. This Franchise Agreement shall be for a term of Ten (10) years from such Effective Date. Considered and approved this 15th day of November, 2014.

This Franchise Agreement shall be for the term of ten (10) years from such Effective Date upon Mediacom signed execution and shall expire on November 15, 2024

Prairieview Trails Development – to be serviced by Mediacom contingent with the 10 year term of this franchise agreement with the City of Wheaton