

ORDINANCE NO. 2018-15

CITY OF JORDAN, SCOTT COUNTY, MINNESOTA

AN ORDINANCE GRANTING TO JAGUAR COMMUNICATIONS, INC., A NONEXCLUSIVE FRANCHISE TO CONSTRUCT, OPERATE, REPAIR AND MAINTAIN A FIBER OPTIC CABLE SYSTEM FOR THE TRANSPORTATION, DISTRIBUTION, MANUFACTURE AND SALE OF CABLE SERVICES FOR PUBLIC AND PRIVATE USE AND TO USE THE PUBLIC WAYS AND GROUNDS OF THE CITY OF JORDAN, SCOTT COUNTY, MINNESOTA, FOR SUCH PURPOSE

THE CITY COUNCIL OF THE CITY OF JORDAN, SCOTT COUNTY, MINNESOTA, ORDAINS:

SECTION 1. DEFINITIONS.

For purposes of this Ordinance, the following capitalized terms shall have the meanings ascribed to them in the Cable Communications Policy Act of 1984, as amended from time to time, 47 U.S.C. Section 521 et seq. (the “Cable Act”), unless otherwise defined herein.

Applicable Law. Any local, state or federal statute, law, regulation or other legal authority governing any other matter addressed in this Ordinance.

Cable Communication System. A facility, including Fiber Optic Cable, consisting of closed transmission paths and associated signal generation, reception, and control equipment that is designated to provide Cable Service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (A) a facility that serves only to retransmit television signals of 1 or more television broadcast stations; (B) a facility that serves subscribers without using any public right-of-way; (C) a facility of a common carrier, which is subject, in whole or part, to the provisions of subchapter II of the Cable Act, except that such facility shall be considered a Cable Communication System (other than for purposes of Section 541(c) of the Cable Act) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand service; (D) an open video system that complies with Section 573 of the Cable Act; or (E) any facilities of an electric utility used solely for operating its electric system.

Cable Service. The one-way transmission to subscribers of video programming or other programming services and subscriber interaction, if any, which is required for the use of video programming or other programming services.

Channel. A portion of an electromagnetic frequency spectrum which is used in a Cable Communication System and which is capable of delivering a television channel as defined by the FCC by regulation.

City. The City of Jordan, County of Scott, State of Minnesota.

City Code. The municipal code for the City of Jordan.

City Utility System. Facilities used for providing public utility service owned or operated by the City or agency thereof, including sewer, storm sewer, water service, street lighting and traffic signals.

Company. Jaguar Communications, Inc. (“Jaguar”) its successors and assigns including all successors or assigns that own or operate any part or parts of the Cable Communication System, Cable Service, Conduit and/or Fiber Optic Cable subject to this Ordinance.

Conduit. A reinforced passage or opening in, on, under, or through the ground capable of containing communications facilities, including Fiber Optic Cable.

Effective Date. The date on which all persons necessary to sign this Ordinance in order for it to be binding on both parties.

FCC. The Federal Communications Commission, or successor governmental entity thereto.

Fiber Optic Cable. A cable containing optical fibers that traps and transmits light pulses through fiber networks for purposes of delivering Cable Service signals.

Franchise. This document containing the specific provisions of authorization granted and the contractual and regulatory agreement created hereby.

Franchise Area. The present legal boundaries of the City as of the Effective Date, and shall also include any additions thereto, by annexation or other legal means.

Installation. The connection, by or on behalf of the Company, of the Cable System from the feeder cable to the point of connection with the Subscriber’s terminal equipment.

Notice. A writing served by any party or parties on any other party or parties. Notice to Company shall be mailed to Jaguar Communications, Inc., Attn: Legal Dept., 213 South Oak Avenue, Owatonna, Minnesota 55060; with a copy to Jaguar Communications, Inc., Attn: Chief Technical Officer, 213 South Oak Avenue, Owatonna, Minnesota 55060. Notice to the City shall be mailed to City Administer, City of Jordan, 210 1st Street East, Jordan, Minnesota 55352. Any party may change its respective address for the purpose of this Ordinance by written Notice to the other parties.

Ordinance. This franchise ordinance, also referred to as the Franchise.

Public Way. Any highway, street, alley or other public right-of-way within the City commonly used for utility purposes, including general or utility easements in which the City has the right and authority to authorize, regulate or permit the location of facilities other than those of the City. Public Way shall not include any real or personal City property that is not specifically described in the previous sentence and shall not include City buildings, fixtures, and other structures or improvements, regardless of whether they are situated in the public right-of-way.

Subscriber. A person or user of the Cable Communication System who lawfully receives Cable Service therefrom with Company's express permission.

SECTION 2. ADOPTION OF FRANCHISE.

2.1 **Grant of Franchise.** City hereby grants Company, for a period of 15 years from the date this Ordinance is passed and approved by the City, the right to occupy or use the Public Way to provide such Cable Services over a Cable Communication System, subject to: (a) the provisions of this Franchise governing Cable Services within the Franchise Area, and (b) all provisions of the City Code and right-of-way or Public Way regulations. For these purposes, Company may construct, operate, repair and maintain Fiber Optic Cable for Communication Services under and across the Public Ways, subject to the provisions of this Ordinance. Company may do all reasonable things necessary or customary to accomplish these purposes, subject, however, to such reasonable regulations as may be imposed by the City pursuant to a public right-of-way ordinance or permit requirements adopted consistent with state law.

Nothing in this Ordinance shall be construed to prohibit the Company from providing services other than Cable Services to the extent not prohibited by Applicable Law. The City hereby reserves all of its rights to regulate such other services to the extent not prohibited by Applicable Law and no provision herein shall be construed to limit or give up any right to regulate.

2.2 **Effective Date; Written Acceptance.** This Franchise shall be in force and effect from and after the passage of this Ordinance and publication as required by law and its acceptance by Company. If Company does not file a written acceptance with the City within 60 days after the date the City Council adopts this Ordinance, or otherwise inform the City, at any time, that the Company does not accept this Franchise, the City Council by resolution shall revoke this Franchise.

2.3 **Reservation of Authority.**

2.3.1 The Company acknowledges that the City may modify its regulatory policies by lawful exercise of the City's police powers throughout the term of this Franchise. The Company agrees to comply with such lawful modifications to the City Code.

2.3.2 Nothing in this Ordinance shall (A) abrogate the right of the City to perform any public works or public improvements of any description, (B) be construed as a waiver of any codes or ordinances of general applicability promulgated by the City, or (C) be construed as a waiver or release of the rights of the City in and to the Public Way.

2.3.3 This Ordinance complies with the Minnesota franchise standards set forth in Minnesota Statutes Section 238.084.

2.4 **Service and Rates.** The terms and conditions of service and the rates to be charged by Company for Cable Services in City are subject to the FCC. Before any new or modified rate, fee, or charge is imposed, Company shall follow the applicable FCC notice requirements and rules and notify affected customers, which notice may be by any means permitted under Applicable Law.

Nothing in this Franchise shall in any way prevent the City from regulating any rates charged by Company. If the City elects to regulate, the City shall follow the procedures outlined in applicable FCC regulations. The City reserves any rights it may have under Applicable Law to regulate the terms of any Subscriber contract used by Company.

2.5 **Publication Expense.** Company shall pay the expense of publication of this Ordinance.

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

2.7 **Continuation of Franchise.** If the City and the Company are unable to agree on the terms of a new franchise by the time this Franchise expires, this Franchise will remain in effect until a new franchise is agreed upon, or until 90 days after the City or the Company serves written Notice to the other party of its intention to allow Franchise to expire. However, in no event shall this Franchise continue for more than one year after expiration of the 15-year term set forth in Section 2.1.

SECTION 3. CONSTRUCTION AND MAINTENANCE OF THE CABLE SYSTEM.

3.1 **Location of Facilities.** Cable Communication Systems shall be located, constructed, and maintained so as not to interfere with the safety and convenience of ordinary travel along and over Public Ways and so as not to disrupt normal operation of any City Utility System or other facilities located within the Public Ways. The location and relocation of Cable Communication Systems shall be subject to reasonable regulations of the City consistent with authority granted the City to manage its Public Ways under state law, to the extent not inconsistent with a specific term of this Franchise. At the time of Cable Communication System construction, if all of the transmission and distribution facilities of all of the respective public or municipal utilities in any area of the Franchise Area are underground, Company shall place its transmission and distribution facilities underground.

3.2 **Street Openings.** Company shall not open or disturb the surface of any Public Way for any purpose without first having obtained a permit from the City, if required by a separate ordinance, for which the City may impose a reasonable fee, unless the City is receiving a franchise fee pursuant to this Ordinance, in which case all permit fees will be waived. Permit conditions imposed on Company shall not be more burdensome than those imposed on other public-right-of-way users for similar facilities or work. Company may, however, open and disturb the surface of any Public Way without a permit if (i) an emergency exists requiring the immediate repair of Cable Communication Systems and (ii) Company gives telephone, email or similar Notice to the City

before commencement of the emergency repair, if reasonably possible. Within two business days after commencing the repair, Company shall apply for any required permits and pay any required fees.

3.3 **Restoration.** After undertaking any work requiring the opening of any Public Way, Company shall restore the Public Ways in accordance with Minnesota Rules, 7819.1100. All restoration work shall be completed as promptly as weather permits and at Company's own cost and expense. All restoration work shall restore the Public Way to a condition that complies with applicable provisions of the City Code and standards. If Company shall not promptly perform and complete the restoration work, remove all dirt, rubbish, equipment and material, and put the Public Ways in the said condition, the City shall have, after demand to Company to cure and the passage of a reasonable period of time following the demand, but not to exceed five (5) days, the right to make the restoration of the Public Ways at the expense of Company. Company shall pay to the City the cost of such work done for or performed by the City.

3.4 **Avoid Damage.** Company must take reasonable measures to prevent the Cable Communication Systems from causing damage to persons or property. Company must take reasonable measures to protect the Cable Communication Systems from damage that could be inflicted on it by persons, property, or the elements. Company must take protective measures when the City performs work near the Cable Communication Systems, if given Notice pursuant to section 3.5 herein by the City of such work prior to its commencement.

3.5 **Safety Requirements.** Company shall, at its own cost and expense, undertake all necessary and appropriate efforts to maintain its work sites in a safe manner in order to prevent failures and accidents that may cause damage; injuries or nuisances. All work undertaken on the Cable Communication Systems shall be performed in substantial accordance with applicable FCC or other federal and state regulations. The Cable Communication Systems shall not endanger or interfere with the safety of persons or property in the Franchise Area.

3.6 **Notice of Improvements to Streets.** The City will give Company reasonable written Notice of plans for improvements to Public Ways where the City has reason to believe that Cable Communication Systems may affect or be affected by the improvement. The Notice will contain: (i) the nature and character of the improvements, (ii) the Public Ways upon which the improvements are to be made, (iii) the extent of the improvements, (iv) the time when the City will start the work, and (v) if more than one Public Way is involved, the order in which the work is to proceed. The Notice will be given to Company a sufficient length of time, considering seasonal working conditions, in advance of the actual commencement of the work to permit Company to make any additions, alterations or repairs to its Cable Communication Systems the Company deems necessary.

3.7 **New Grades or Lines.** If the grades or lines of any Public Way within the Franchise Area are lawfully changed at any time during the term of this Franchise, then Company shall, upon reasonable advance written notice from the City (which shall not be less than thirty (30) calendar days) and at its own cost and expense, protect or promptly alter or relocate the Cable Communication Systems, or any part thereof, so as to conform with any such new grades or lines.

3.8 **Mapping Information.** Company shall provide complete and accurate information with its permit application and promptly provide as-built drawings for its Cable Communication Systems in accordance with the requirements of Minnesota Rules 7819.4000 and 7819.4100.

SECTION 4. RELOCATIONS.

4.1 **Relocation at request of Third Party.** Company shall, upon reasonable prior written request of any person holding a permit issued by the City to move any structure, temporarily move its Cable Communication Systems to permit the moving of such structure; provided (1) Company may impose a reasonable charge on any person for the movement of its Cable Communication Systems and (2) Company is given not less than thirty (30) calendar days advance written notice to arrange for such temporary relocation.

4.2 **Relocation in Public Ways due to Public Projects.** Company and City shall comply with the provisions of Minnesota Rules 7819.3100, with respect to requests for the Company to relocate Cable Communication Systems located in Public Ways.

4.3 **Projects with Federal Funding.** Relocation, removal, or rearrangement of any Company Fiber Optic Cable for Communication Services made necessary because of the extension into or through City of a federally aided highway project shall be governed by the provisions of Minnesota Statutes Sections 161.45 and 161.46.

SECTION 5. INDEMNIFICATION.

5.1 **Indemnity of City.** Company shall indemnify and hold the City harmless from any and all liability, on account of injury to persons or damage to property occasioned by the construction, maintenance or repair, of the Fiber Optic Cable for Communication Services located in the Public Ways and Public Grounds. The City shall not be indemnified for losses or claims occasioned through its own negligence or otherwise wrongful act or omission except for losses or claims arising out of or alleging the City's negligence as to the issuance of permits for, or inspection of, Company's plans or work.

5.2 **Defense of City.** In the event a suit is brought against the City under circumstances where this agreement to indemnify applies, Company at its sole cost and expense shall defend the City in such suit if written Notice thereof is promptly given to Company within a period wherein Company is not prejudiced by lack of such Notice. If Company is required to indemnify and defend, it will thereafter have control of such litigation, but Company may not settle such litigation without the consent of the City, which consent shall not be unreasonably withheld. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the City. The Company, in defending any action on behalf of the City, shall be entitled to assert in any action every defense or immunity that the City could assert in its own behalf. This Franchise agreement shall not be interpreted to constitute a waiver by the City of any of its defenses of immunity or limitations on liability under Minnesota Statutes, Chapter 466.

SECTION 6. VACATION OF PUBLIC WAYS

The City shall give Company at least two weeks prior written Notice of a proposed vacation of a Public Ways or Public Grounds. The City and the Company shall comply with Minnesota Rules 7819.3200 with respect to any request for vacation.

SECTION 7. CHANGE IN FORM OF GOVERNMENT.

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

SECTION 8. FRANCHISE FEE.

8.1 **Form.** During the term of the franchise hereby granted, the City may charge the Company a franchise fee. Company shall pay to the City a franchise fee in an amount equal to five percent (5%) of annual gross revenue derived by Company from or in connection with the operation of the Cable System to provide Cable Communication Services in the Franchise Area. The City acknowledges and accepts that Company shall maintain its books and records in accordance with Applicable Law and Generally Accepted Accounting Principles (“GAAP”). The payment of franchise fees shall be made on a quarterly basis and shall be due forty-five (45) days after the close of each calendar quarter. Each franchise fee payment shall be accompanied by a report prepared by Company showing the basis for the computation of the franchise fees paid during that period.

8.2 Franchise Fees Subject to Audit.

8.2.1 Upon reasonable prior written notice, during regular business hours at Company’s principal business office, the City shall have the right to inspect Company’s financial records used to calculate the City’s franchise fees.

8.2.2 All amounts paid shall be subject to audit and re-computation by the City and acceptance of any payment shall not be construed as an accord that the amount paid is in fact the correct amount; however, mutually agreed upon payments made as a result of an audit shall be deemed final payments. Audits may be performed during regular business hours, upon no less than twenty (20) days prior written notice no more than once in any twelve (12) month period and the audit period may not extend back beyond the applicable state statute of limitations. If the results of the audit by the City show a discrepancy of more than five percent (5%) in the Franchise fees that were to be paid to the City, Company shall pay reasonable cost of such audit up to a total cost of Seven Thousand Five Hundred Dollars (\$7,500.00). Upon the completion of any such audit by the City, the City shall provide to Company a final report setting forth the City’s findings in detail, including any and all substantiating documentation. In the event of an alleged underpayment, Company shall have thirty (30) days from the receipt of the report to provide the City with a written response to or refuting the results of the audit, including any substantiating documentation. The City shall determine if any underpayment has occurred and pursue enforcement via the provisions of this Franchise, subject to Company’s right of appeal as set forth herein. Upon

final determination of any fees underpaid, Company shall remit such payments that may be due within thirty (30) days.

8.2.3 Confidential or proprietary information may be disclosed pursuant to a reasonable non-disclosure agreement. The intent of the parties is to work cooperatively to insure that all books and records reasonably necessary for the City's monitoring and enforcement of the Franchise are provided to the City.

8.2.4 Company acknowledges and agrees that the Franchise fees payable by Company to the City pursuant to Section 8 shall take precedence over all other material provisions of the Franchise and shall not be deemed to be in the nature of a tax, and shall be in addition to any and all taxes of general applicability and other fees and charges which do not fall within the definition of franchise fee under 47 U.S.C. § 542.

8.2.5 Company shall not apply or seek to apply all or any part of any taxes, fees or assessments of general applicability levied or imposed by the City or (including any such tax, fee or assessment imposed on both utilities and cable operators or their services) that do not fall within the definition of a franchise fee under 47 U.S.C. § 542 as a deduction or other credit from or against any of the franchise fees or other payments or contributions to be paid or made by Company to the City pursuant to this Franchise which shall be deemed to be separate and distinct obligations of Company.

8.3 **Oversight of Franchise.** In accordance with Applicable Law, the City shall have the right to, on reasonable prior written notice and in the presence of Company's employee, periodically inspect the construction and maintenance of the Cable System in the Franchise Area as necessary to monitor Company's compliance with the provisions of this Ordinance.

8.4 **Continuation of Franchise Fee.** If this Franchise expires and the City and Company are unable to agree upon terms of a new franchise, the franchise fee, if any being imposed by the City at the time this Franchise expires, will remain in effect until a new franchise is agreed upon. However, the franchise fee will not remain in effect for more than one year after the franchise expires as stated in Section 2.6 of this Franchise. If for any reason the franchise terminates, the franchise fee will terminate at the same time.

SECTION 9. ABANDONED FACILITIES.

Company shall comply with Minnesota Statutes, Section 216D.01 et seq. and Minnesota Rules 7819.3300, as they may be amended from time to time with respect to abandoned facilities located in Public Ways. Company shall maintain records describing the exact location of all abandoned and retired Fiber Optic Cable and any other Cable Communication Systems within the Public Ways, produce such records at the City's request and comply with the location requirements of Section 216D.04 with respect to all Fiber Optic Cable and Cable Communication Systems, including abandoned and retired cables and other facilities not located in Public Ways.

SECTION 10. CUSTOMER SERVICE STANDARDS; CUSTOMER BILLS; AND PRIVACY PROTECTION.

10.1 **Customer Service Standards.** The City hereby adopts the customer service standards set forth in Part 76, § 76.309 of the FCC's rules and regulations as amended. Company shall comply in all respects with the customer service requirements established by the FCC and those set forth herein.

10.1.1 Company shall maintain a an electronic system and toll-free phone number for customer service and bill payment for matters such as receiving subscriber payments, handling the billing questions, equipment replacement and customer service information. Company may apply a charge in the event that the malfunction is due to damage or loss caused by the Subscriber. The rate(s) or charge(s) for such service call shall not exceed the amounts permitted by rate regulation rules and Applicable Law. Company shall also make equipment changes and exchanges available via mail order or similar service or personal service made available to all Subscribers for the convenience of Subscribers.

10.1.2 Company shall comply with the standards and requirements for customer service set forth in this Section 10 during the term of this Franchise.

10.1.3 Company will maintain a local toll-free telephone access line which will be available to its Subscribers twenty-four (24) hours a day, seven (7) days a week.

(a) Company representatives will be available to respond to Subscriber telephone inquiries during normal business hours.

(b) After normal business hours, the access line may be answered by a service or an automated response system.

(c) Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time under Normal Operating Conditions, measured on a quarterly basis.

(d) Company shall not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless a historical record of complaints indicates a clear failure to comply.

(e) Under normal operating conditions, the Subscriber will receive a busy signal less than three percent (3%) of the time.

(f) Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located.

10.1.4 Under normal operating conditions, each of the following standards will be met no less than ninety five percent (95%) of the time measured on a quarterly basis:

(a) Standard installation will be performed within thirty (30) calendar days after an order has been placed. "Standard" installations are those that are located up to one hundred twenty-five (125) feet from existing distribution system.

(b) Excluding conditions beyond the control of Company, Company will begin working on service interruptions promptly and in no event later than twenty-four (24) hours after the interruption becomes known. Company must begin actions to correct other service problems the next business day after notification of the service problem.

(c) The appointment window alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four (4) hour time block during normal business hours. (Company may schedule service calls and other installation activities outside of normal business hours for the express convenience of the Subscriber.)

(d) Company may not cancel an appointment with a Subscriber after the close of business on the business day prior to the scheduled appointment.

(e) If Company's representative is running late for an appointment with a Subscriber and will not be able to keep the appointment as scheduled, the Subscriber will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the Subscriber.

10.1.5 Communications between Company and Subscribers.

(a) Company will provide written information on each of the following areas at the time of installation of service, at least annually to all Subscribers, and any time upon request:

- i. Products and services offered;
- ii. Prices and options for programming services and conditions of subscription to programming and other services;
- iii. Installation and service maintenance policies;
- iv. Instructions on how use the Cable Service;

- v. Channel positions on programming carried on the system; and
- vi. Billing and complaint procedures, including the address and telephone number of the Company's local office.

Subscribers shall be advised of the procedures for resolution of complaints about the quality of the television signal delivered by the Company.

(b) Subscribers will be notified of any changes in rates, programming services or Channel positions as soon as possible in writing. Notice must be given to Subscribers a minimum of thirty (30) days in advance of any significant changes in the information required by Section 10.

(c) In addition to the requirements of subparagraph (b) of this section regarding advance notification to Subscribers of any changes in rates, programming services or Channel positions, Company shall give thirty (30) days written notice to both Subscribers and the City before implementing any rate or service change. Such notice shall state the precise amount of any rate change and briefly explain in readily understandable fashion the cause of the rate change (e.g. inflation, change in external costs or the addition/deletion of Channels). When the change involves the addition or deletion of Channels, each Channel added or deleted must be separately identified. For purposes of the carriage of digital broadcast signals, Company need only identify for Subscribers, the television signal added and not whether that signal may be multiplexed during certain dayparts.

(d) To the extent Company is required to provide notice of service and rate changes to Subscribers, Company may provide such notice using reasonable written means at its sole discretion.

(e) Notwithstanding any other provision of this section, Company shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, franchise fee, or any other fee, tax, assessment, or charge of any kind imposed by any federal agency, state, or City on the transaction between Company and the Subscriber.

10.1.6 Credits for service will be issued no later than the Subscribers next billing cycle following the determination that a credit is warranted.

10.1.7 Billing:

(a) Consistent with 47 C.F.R. § 76.1619, bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, service charges and equipment charges. Bills

will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

(b) In case of a billing dispute, Company must respond to a written complaint from a Subscriber within thirty (30) days.

10.1.8 Company shall, upon request, provide the City with any standard form residential Subscriber contract utilized by Company. If no such written contract exists, Company shall file with the City a document completely and concisely stating the length and terms of the Subscriber contract offered by Company to Subscribers. The length and terms of any Subscriber contract(s) shall be available for public inspection during normal business hours. A list of Company's current Subscriber rates and charges for Cable Services shall be maintained on file with the City and shall be available for public inspection.

10.1.9 If a Subscriber's Cable Service is interrupted or discontinued, without cause, for twenty-four (24) or more consecutive hours, Company shall, upon request from the Subscriber, credit each Subscriber pro rata for such interruption. For this purpose, every month will be assumed to have thirty (30) days.

10.1.10 Company shall comply with all Applicable Laws with respect to any assessment, charge, cost, fee or sum, however characterized, that Company imposes upon a Subscriber for late payment of a bill. The City reserves the right to enforce Company's compliance with all Applicable Laws to the maximum extent legally permissible.

10.1.11 Company shall, upon request, provide the City with information which shall describe in detail Company's compliance with each and every term and provision of Section 10.1.

10.2 **Subscriber Bills.** Subscriber bills shall be designed in such a way as to present the information contained therein clearly and comprehensibly to Subscribers, and in a way that (A) is not misleading and (B) does not omit material information. Notwithstanding anything to the contrary in Section 10.1, above, Company may, in its sole discretion, consolidate costs on Subscriber bills as may otherwise be permitted by Section 622(c) of the Cable Act (47 U.S.C. § 542(c)).

10.3 **Privacy Protection.**

10.3.1 Company shall comply with all applicable federal and state privacy laws, including Section 631 of the Cable Act and regulations adopted pursuant thereto.

10.3.2 No signals of a 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. 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 communication system.

10.3.3 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 Subscriber or lists that identify the viewing habits of Subscribers, may be sold or otherwise made available to any person other than to the Company, its employees and agents for internal business use, or to the Subscriber who is subject of that information, unless the Company has received specific written authorization from the Subscriber to make the data available.

10.3.4 Written permission from the Subscriber is not required for the Company when conducting system wide or individually addressed electronic sweeps for the purpose of verifying system integrity or monitoring for purposes of billing. Confidentiality of this information is subject to 10.3.3.

SECTION 11. TRANSFER OF CABLE SYSTEM OR FRANCHISE OR CONTROL OF COMPANY.

Company may not sell or transfer the Cable System or the Franchise, pursuant to Minnesota Statutes Section 238.083, without prior written consent of the City, which consent shall not be unreasonably withheld or delayed. No consent shall be required, however, for (1) a transfer in trust, by mortgage, or by assignment of any rights, title, or interest of Company in the Franchise or in the Cable System in order to secure indebtedness, or (2) a transfer to an entity directly or indirectly owned or controlled by Company. Within thirty (30) days of receiving a request for consent in the form of FCC form 394, the City shall, in accordance with FCC rules and regulations, notify the Company in writing of the additional information, if any, it requires to determine the legal, financial and technical qualifications of the transferee or new controlling party. If the City has not taken final action on Company's request for consent within one hundred twenty (120) days after receiving such request, consent shall be deemed granted.

SECTION 12. INSURANCE AND INDEMNITY.

12.1 **Insurance.** Throughout the term of this Franchise Agreement, Company shall, at its own cost and expense, maintain Comprehensive General Liability Insurance and provided the City with certificates of insurance designating the City as an additional insured and demonstrating that Company has obtained the insurance required in this section. Such policy or policies shall be in the minimum amount of One Million Dollars (\$1,000,000.00) for bodily injury or death to any one person, and Two Million Dollars (\$2,000,000.00) for bodily injury or death to any two or more persons resulting from one occurrence. Such policy or policies shall be non-cancelable except upon thirty (30) days prior written notice to the City. Company shall

provide workers' compensation coverage in accordance with Applicable Law. Company shall indemnify and hold harmless the City from any workers compensation claims to which Company may become subject during the term of this Franchise.

12.2 **Indemnification.**

12.2.1 Company shall indemnify, defend and hold harmless the City, its officers, boards, commissions, employees, and agents (collectively the "Indemnified Parties") from and against any and all lawsuits, claims, causes of action, actions, liabilities, demands, damages, judgments, settlements, disability, losses, expenses (including attorney's fees and disbursements) and costs, directly related thereto, that any of the Indemnified Parties may at any time suffer, sustain or incur arising out of, based upon or in any way connected with Company's operations, the exercise of the Franchise, the breach by Company of its obligations under this Franchise and/or the activities of Company, its subcontractors, employees and agents hereunder. This obligation shall survive the term of this Franchise to the extent required to effectuate this provision.

12.2.2 City does not, and shall not, waive any rights against Company which it may have by reason of the indemnification provided for in this Franchise, because of the acceptance by the City, or the deposit with the City by Company of any of the insurance policies described in this Franchise.

12.2.3 The indemnification of the City by Company provided for in this Franchise shall apply to all damages and claims for damages of any kind suffered by reason of any of Company's operations referred to in this Franchise, regardless of whether or not such insurance policies shall have been determined to be applicable to any such damages or claims for damages.

SECTION 13. REMEDIES.

13.1 **Franchise Violations, Remedies, and Revocation Remedies.** The City shall have the right to assert the remedies set out below in the event Company violates any provision of this Franchise.

13.1.1 To the extent the City deems necessary to remedy the default, Company shall be responsible for all direct and actual costs related to the enforcement action including, but not limited to, legal and administrative costs;

13.1.2 Impose liquidated damages as set forth in Section 13.4, but only after the due process provisions outlined herein have been completed;

13.1.3 Commencing an action at law for monetary damages or seeking equitable relief, including specific performance; or

13.1.4 In the case of Company's default as to a material provision of the Franchise, undertake the proceeding to revoke the Franchise.

In determining which remedy or remedies for Company's violation are appropriate, the City shall take into consideration the nature and extent of the violation, the remedy needed to prevent such violations in the future, whether Company has a history of previous violations of the same or similar kind, and such other considerations as are appropriate under the circumstances.

13.2 **Revocation.** The City has the right to revoke this Franchise, and all rights and privileges pertaining thereto, in the event that:

13.2.1 Company is in violation of any material provision of the Franchise or has demonstrated a pattern of Franchise violations and fails to correct the violation(s) after written notice of the violation(s) and proposed forfeiture in a reasonable opportunity thereafter to correct the violation(s); or

13.2.2 Company becomes insolvent, unable or unwilling to pay its debts, or is adjudged bankrupt, to the extent permitted by Applicable Law; or

13.2.3 Company is found to have engaged in any actual or attempted fraud or deceit upon the City, persons or Subscribers.

13.3 **Procedure.**

13.3.1 Enforcement Procedures.

- (a) Notice of Violation or Default. In the event the City believes that Company has not complied with the material terms of the Franchise or has demonstrated a pattern of Franchise violations, it shall first make contact with Company to informally discuss the issue. This informal discussion may be via telephone, email or other electronic means and is intended as a courtesy to Company prior to issuing a notice of violation. Thereafter, the City shall notify Company in writing with specific details regarding the exact nature of the alleged noncompliance or default ("Violation Notice").
- (b) Company's Right to Cure or Respond. Company shall have thirty (30) days from the receipt of the Violation Notice to post security required by the City and (A) to respond to the City, contesting the assertion of noncompliance or default; or (B) to cure such default; or (C) in the event that, by nature of the default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected date that they will be completed. The City shall not unreasonably refuse to accept the Company's proposed cure date but such decision shall be the City's alone to make.
- (c) Public Hearings. In the event Company fails to respond to the Violation Notice or in the event that the alleged default is not remedied as required, the

City shall refer the matter to the City Council to address this matter. Company will be provided in opportunity to present evidence to contest the alleged violation. The City shall notify Company of the hearing date in writing. A determination as to whether Company is in default of this Franchise shall be within City's sole discretion, but any such determination shall be subject to appeal to a court of competent jurisdiction. Such appeal to the appropriate Court shall be taken within thirty (30) days of the issuance of the written determination of the City. City shall receive notice from Company of any appeal concurrent with any filing to a Court of competent jurisdiction.

13.4 **Liquidated Damages.**

13.4.1 Because companies failure to comply with the provisions of this franchise will result in damage to the City and because it will be impractical to determine the actual amount of such damages, the City and Company hereby agree upon and specify certain amounts set forth hereafter in this section which represent both parties' best estimate of the damages.

13.4.2 The City shall specify any damages subject to the section and shall include such information in the Violation Notice sent to Company required under subsection 13.3.1. Such a Violation Notice may provide for damages sustained prior to the Violation Notice where so provided, and subsequent thereto pending compliance by Company.

13.4.3 To the extent of that the City elects to assess liquidated damages as provided in this section and such liquidated damages have been paid, the parties agree that this shall be the City's so exclusive damage remedy of actual damages; provided, that this shall not limit the right of the City to seek equitable or other relief as reserved in subsection 13.4.

13.4.4 Unless otherwise provided, liquidated damages shall accrue once the thirty (30) day cure period has expired following Company's receipt of the Violation Notice, unless the City has agreed in writing to extend the thirty (30) day cure period. Nothing in this section prevents the parties from settling any dispute relating to liquidated damages by mutual stipulation.

13.4.5 Company may cure the breach or violation within the time specified to petition for review to the City's satisfaction, whereupon no liquidated damages are assessed.

13.4.6 Schedule of Liquidated Damages. Nothing requires the City to assess liquidated damages, acting in its sole discretion, but such non-assessment does not operate as waiver or estoppel upon the City. Liquidated damages are set as follows:

- (a) For failure to provide data, documents, reports and information as required by this Franchise, Fifty and No/100 Dollars (\$50) per day per each separate violation.

- (b) For failure to conduct tests as required by this Franchise, Fifty and No/100 Dollars (\$50) per day.
- (c) For failure to answer Subscriber calls as required herein, in any calendar quarter where Company fails to meet the applicable standard and performs at eighty percent (80%) or above, Company shall pay the City One Thousand and No/100 Dollars (\$1,000); in any calendar quarter where Company fails to meet the applicable standard and perform at less than eighty percent (80%) but at least seventy percent (70%), Company shall pay the City Two Thousand Five Hundred and No/100 Dollars (\$2,500); in any calendar quarter where Company fails to meet the applicable standard and performs at less than seventy percent (70%), Company shall pay the City Five Thousand and No/100 (\$5,000).
- (d) For any violation of the any other customer service standard, One Hundred and No/100 Dollars (\$100) per day per violation.
- (e) Failure to pay liquidated damages lawfully assessed under this Franchise, where the same have not been otherwise recovered from any security provided: one percent (1%) of the unpaid amount per month.
- (f) For all other violations of the Franchise for which actual damages may not be ascertainable: One Hundred and No/100 Dollars (\$100) per day for each violation.

13.5 **Procedure for Revocation, Termination or Cancellation.**

13.5.1 City shall provide Company with written notice of a cause for revocation, termination, or cancellation and the intent to revoke, terminate or cancel and shall allow Company thirty (30) days subsequent to receipt of the notice in which to correct the violation or provide adequate assurance of performance in compliance with the Franchise. In the notice required herein, City shall provide Company with the basis of the revocation, termination or cancellation.

13.5.2 Company shall be provided the right to a public hearing affording due process before the City Council prior to the effective date of revocation, termination, or cancellation, which public hearing shall follow the thirty (30) day notice provided in subparagraph 13.3.1(a) above. City shall provide Company with written notice of its decision together with written findings of fact supplementing said decision.

13.5.3 Only after the public hearing and upon written notice of the determination by the City to revoke, terminate or cancel the Franchise may Company appeal said decision with an appropriate state or federal court or agency.

13.5.4 During the appeal period, the Franchise shall remain in full force and effect unless the term thereof sooner expires or unless continuation of the Franchise would endanger the health, safety, and welfare of any person or the public.

13.6 **Abandonment.** Company may not abandon Cable Service or a portion of it without having given three (3) months prior written notice to the City. Upon termination or forfeiture of the Franchise, unless otherwise required by Applicable Law, Company shall remove its cable, wires, appliances and other facilities from the Public Ways within the Franchise Area if the City requests. Company may not abandon Cable Services or a portion of it without compensating the City for damages resulting from its abandonment or failure to remove its facilities if so directed by the City in the event of termination or forfeiture as permitted by law.

SECTION 14. MISCELLANEOUS PROVISIONS.

14.1 **Force Majeure.** Company shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the Franchise), where such noncompliance or alleged defaults occurred or were caused by strike, riot, war, earthquake, flood, tornado or other catastrophic act of nature, labor disputes, failure of utility service necessary to operate the Cable System, governmental, administrative or judicial order or regulation or other event that is reasonably beyond Company's ability to anticipate or control.

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

14.3 **Limitation on Applicability.** This Ordinance constitutes a franchise agreement between the City and Company as the only parties. No provisions herein shall in any way inure to the benefit of any third person (including the public at large) so as to constitute any such person as a third party beneficiary of this Ordinance or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.

14.4 **Entire Agreement.** This Franchise embodies the entire understanding and agreement of the City and Company with respect to the subject matter hereof and supersedes all prior understandings, agreements and communications, whether written or oral. All ordinances or parts of ordinances that are in conflict with or otherwise impose obligations different from the provisions of this Franchise are superseded by this Franchise.

14.5 **Governing Law.** This Franchise shall be deemed to be executed in the State of Minnesota and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of Minnesota.

14.6 **Modification.** No provision of this Franchise shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the City and

Company, which amendment shall be authorized on behalf of the City through adoption of an appropriate resolution by the City, as required by Applicable Law.

14.7 **No Waiver of Rights.** Nothing in this Ordinance shall be construed as a waiver of any rights, substantive or procedural, that Company or the City may have under federal or state law unless such waiver is expressly stated herein.

14.8 **Competitive Equality.** Company acknowledges and agrees that the City reserves the right to grant one (1) or more additional franchises or other similar lawful authorization to provide Cable Services within the Franchise Area.

14.9 **Notice.** All notices shall be in writing and shall be sufficiently given and served upon the other party by hand delivery, first class mail, registered or certified, return receipt requested, postage prepaid, or by reputable overnight courier service and addressed as follows:

To the City: City of Jordan
Attn: City Administrator
210 East First Street
Jordan, MN 55352

To the Company: Jaguar Communications, Inc.
Attn: Legal Dept.
213 South Oak Avenue
Owatonna, MN 55060

With a copy to:

Jaguar Communications, Inc.,
Attn: Chief Technical Officer
213 South Oak Avenue
Owatonna, MN 55060

If the Company does not consent to this Ordinance or any amendment hereafter, this Ordinance and/or any ordinance containing an amendment hereto shall be revoked by City.

APPROVED BY the City Council of the City of Jordan, Minnesota, this ___ day of September, 2018.

CITY OF JORDAN

Tanya Velishek, Mayor

ATTEST:

Thomas Nikunen, City Administrator

VOTING IN FAVOR:

VOTING IN OPPOSITION:

