

**AN ORDINANCE GRANTING A FRANCHISE TO PINPOINT COMMUNICATIONS, INC., ITS SUCCESSORS OR ASSIGNS, TO OWN AND OPERATE AND MAINTAIN A CABLE SYSTEM IN THE CITY OF GOTHENBURG, NEBRASKA SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE, AND PROVIDING FOR THE REGULATION AND USE OF SAID SYSTEM**

NOW, THEREFORE, the City of Gothenburg, Nebraska does ordain that there is hereby granted, and established a nonexclusive franchise for a period of fifteen (15) years for the operation and maintenance of a Cable System within the City of Gothenburg, Nebraska to Pinpoint Communications, Inc., hereinafter referred to as the "Grantee".

Provided, however, that said Franchise shall be subject to the following terms and performance conditions:

**ARTICLE I  
GRANT OF FRANCHISE  
AND GENERAL PROVISIONS**

**SECTION 1. TITLE OF ORDINANCE**

This Ordinance shall be known and may be cited as the "Cable Franchise", hereinafter "Franchise", and it shall become a part of the ordinances of the City of Gothenburg, Nebraska.

**SECTION 2. DEFINITIONS**

For the purpose of this Ordinance the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

A. "Additional service" shall mean cable television communications service provided by the Grantee or others over its Cable System for which a special charge is made based on program or service content, time or spectrum space usage, and shall include all Cable and Broadband Services offered by the Grantee that are not included within the "Basic Service Tier".

B. "Basic Service Tier" shall mean those subscriber services provided by the Grantee, pursuant to the Cable Act, including the delivery of broadcast signals electing carriage and any public, educational and governmental access covered by the regular monthly charge paid by all Subscribers, excluding optional services for which a separate charge is made.

C. "Broadband Services" shall mean the wide bandwidth characteristics of a transmission medium and its ability to transport multiple signals and traffic types simultaneously. The medium can be coax, optical fiber, twisted pair, DSL local telephone networks or wireless.

D. "Cable Act" shall mean Title VI of the Communications Act of 1934, as amended.

E. "Cable Service" 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 video programming or other programming service.

F. "Cable System" shall mean the Grantee's 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 which provided for sale to or use by the inhabitants or businesses of the City.

G. "Cable mile" shall mean a linear mile of strand-bearing cable as measured on the street or easement from pole to pole or pedestal to pedestal.

H. "City" shall mean the City of Gothenburg, a municipal corporation of the State of Nebraska.

I. "Class IV channel" shall mean a signaling path provided by a Cable System to transmit signals of any type from a subscriber terminal to another point in the Cable System.

J. "Council" shall mean the City Council, the governing body of the City of Gothenburg, Nebraska.

K. "FCC" shall mean the Federal Communications Commission and any legally appointed or elected successor.

L. "Franchise" shall mean the non-exclusive rights granted pursuant to this Ordinance to construct and operate a Cable System along the public ways within all or a specified area in the City. Any such authorizations, in whatever form granted, shall not mean and include any license or permit required for the privilege of transacting and carrying on a business within the City as required by other ordinances and laws of this City.

M. "Grantee" shall mean Pinpoint Communications, Inc. and its lawful successor, transferee or assignee.

N. "Gross Revenues" shall mean all revenues received by the Grantee, from the operation of the Cable System to provide Cable and Broadband Services in the Service Area, provided, however, that such phase shall not include: (1) any taxes, fees, or assessments of general applicability collected by the Grantee from Subscriber for pass-through to a government agency, including the FCC User Fee; (2) unrecovered bad debt; and, (3) any PEG amounts recovered from Subscribers.

O. "Installation" shall mean the connection of the Cable System from feeder cable to the Subscribers' terminals.

P. "Person" shall mean an individual, partnership, association, organization, corporation or any lawful successor, transferee or assignee of said individual, partnership, association, organization or corporation.

Q. "Reasonable notice" shall be written notice addressed to the Grantee at its principal office or such other office as the Grantee has designated to the City as the address to which notice should be transmitted to it, which notice shall be certified and postmarked not less than five (5) days prior to that day in which the

party giving such notice shall commence any action which requires the giving of notice. In computing said five (5) days, Saturdays, Sundays and holidays recognized by the City shall be excluded.

R. "Sale" shall include any sale, exchange, barter or offer for sale.

S. "School" shall mean any school at any educational level operated within the City by any public, private or parochial school system, but limited to, elementary, junior high school, and high school (K-12).

T. "Service area" shall mean the geographic area within Franchise territory having thirty-five (35) homes per cable mile.

U. "State" shall mean the State of Nebraska.

V. "Street" shall include each of the following which have been dedicated to the public or hereafter dedicated to the public and maintained under public authority or by others and located within the City limits: streets, roadways, highways, avenues, lanes, alleys, sidewalks, easements, rights-of-way and similar public ways and extensions and additions thereto, together with such other public property and areas that the City shall permit to be included within the definition of "Street" from time to time.

W. "Subscriber" shall mean any person lawfully receiving Cable Service from the Grantee.

X. "User" means a party utilizing a cable system channel for purposes of production or transmission of material to Subscribers, as contrasted with receipt thereof in a subscriber capacity.

### **SECTION 3. RIGHTS AND PRIVILEGES OF GRANTEE**

The Franchise granted by the City pursuant to this Ordinance shall grant to the Grantee the right and privilege to erect, construct, operate and maintain in, upon, along, across, above, over and under the Streets, now in existence and as may be created or established during its terms; any poles, wires, cable, underground conduits, manholes, and other conductors and fixtures necessary for the maintenance and operation of a Cable System.

### **SECTION 4. FRANCHISE TERRITORY**

This nonexclusive Franchise relates to the City limits as presently defined and to any area henceforth added thereto during the term of this Franchise.

#### **SECTION 5. TERM**

A. The non-exclusive Franchise and the rights, privileges and authority granted herein shall continue in force and effect for a term of fifteen (15) years from the Effective Date.

B. This Franchise may be extended for an additional five (5) years upon a finding by the Council at the end of the twelveth (12<sup>th</sup>) year of the Franchise that the Grantee is and has maintained itself in substantial material compliance with this Franchise.

#### **SECTION 6. FRANCHISE REQUIREMENTS FOR OTHER FRANCHISE HOLDERS**

A. In the event that the City grants one (1) or more franchise(s) or similar authorization, for the construction, operation and maintenance of any communication facility which shall offer services substantially equivalent to services offered by the Cable System, it shall not make the grant on more favorable or less burdensome terms. If said other franchise(s) contain provisions imposing lesser obligations on the company(s) thereof than are imposed by the provisions of this Franchise, Grantee may petition the City for a modification of this Franchise. The Grantee shall be entitled, with respect to said lesser obligations to such modification(s) of this Franchise as may be determined to be necessary to insure fair and equal treatment by this Franchise and said other agreements.

B. The City shall not unreasonably withhold granting the Grantee's petition and so amending the Franchise.

#### **SECTION 7. FRANCHISE RENEWAL**

This Franchise may be renewed upon application of the Grantee pursuant to Section 626 of the Cable Act.

#### **SECTION 8. POLICE POWERS**

In accepting this Franchise, the Grantee acknowledges that its rights hereunder are subject to the police power of the City to adopt and enforce general ordinances necessary to the safety and welfare of the public; and it agrees to comply with all applicable general laws and ordinances enacted by the City pursuant to such lawful police power. Subject to the City's lawful police powers, the City, may not, by ordinance or otherwise, alter any of the Grantee's material rights, benefits, obligations or duties as specified in this Franchise.

**SECTION 9. CABLE SYSTEM FRANCHISE REQUIRED, EXCLUSIVE CONTRACTS PROHIBITED.**

No Cable System shall be allowed to occupy or use the Streets of the City or be allowed to operate without a Franchise to provide Cable Service.

**SECTION 10. USE OF COMPANY FACILITIES**

The City shall have the right, during the life of this Franchise, to install and maintain free of charge upon the poles owned by the Grantee any wire and pole fixtures that do not unreasonably interfere with the operations of the Grantee's Cable System. This right shall not apply to any facilities used by the City to compete with Grantee.

**SECTION 11. NOTICES**

Any notices to be sent to the parties shall be sent by certified mail to the following addresses unless either party notifies the other in writing of another address:

To the City:

City of Gothenburg  
Attn: City Manager  
409 9<sup>th</sup> Street  
Gothenburg, Nebraska, 69138

To the Grantee:

Pinpoint Communications, Inc.  
Attn: President

611 Patterson Street  
P.O. 490  
Cambridge, Nebraska 69022

**SECTION 12. INDEMNIFICATION AND INSURANCE**

A. Indemnification

The Grantee shall, by acceptance of the Franchise granted herein, defend the City, its officers, boards, commissions, agents, and employees for all claims for injury to any person or property caused by the negligence or alleged negligence of Grantee in the construction or operation of the Cable System and in the event of a determination of liability shall indemnify and hold the City, its officers, boards, commissions, agents, and employees harmless from any and all liabilities, claims, demands, or judgments growing out of any injury to any person or property as a result of the violation or failure of Grantee to observe its proper duty or because of the negligence or alleged negligence of Grantee arising out of the construction, repair, extension, maintenance, operation or removal of its wires, poles or other equipment of any kind or character used in connection with the operation of the Cable System.

B. Insurance

1. The Grantee shall maintain throughout the term of the Franchise insurance in amounts at least as follows:

Workers' Compensation	Statutory Limits
Commercial General Liability	\$1,000,000 per occurrence, Combined Single Liability (C.S.L.) \$2,000,000 General Aggregate
Auto Liability including coverage on all owned, non-owned hired autos Umbrella Liability	\$1,000,000 per occurrence C.S.L.
Umbrella Liability	\$1,000,000 per occurrence C.S.L.

2. The City shall be added as an additional insured to the above Commercial General Liability, Auto Liability and Umbrella Liability insurance coverage.

3. The Grantee shall furnish the City with current certificates of insurance evidencing such coverage.

4. The minimum amounts set forth herein for such insurance shall not be construed to limit the liability of the Grantee to the City under the Franchise issued hereunder to the amounts of such insurance.

### **SECTION 13. RIGHTS OF INDIVIDUALS**

A. Grantee shall not deny service, deny access, or otherwise discriminate against subscribers, channel users, or general citizens on the basis of race, color, religion, national origin, age or sex. Grantee shall comply at all times with all other applicable federal, State, local laws and regulations as well as all executive and administrative orders relating to nondiscrimination, which are hereby incorporated and made part of this Ordinance by reference.

B. Grantee shall strictly adhere to the equal employment opportunity requirements of the FCC, State and local regulations, as amended from time to time.

C. The Grantee, or any of its agents or employees, shall not, without the specific written authorization of the Subscriber involved, sell, or otherwise make available to any party any lists which identifies the viewing habits of individual Subscribers.

D. The Cable System of the Grantee shall be operated in a manner consistent with the principle of fairness and equal accessibility to all citizens.

E. Grantee shall establish rates that are nondiscriminatory within the same general class of subscribers which must be applied fairly and uniformly to all subscribers in the Service Area for all services. Nothing contained herein shall prohibit the Grantee from offering (i) discounts to commercial and multiple



family dwelling subscribers billed on a bulk basis; (ii) promotional discounts; or (iii) reduced installation rates for subscribers who have multiple services.

#### **SECTION 14. PUBLIC NOTICE**

Minimum public notice of any public meeting relating to this Franchise shall be by publication at least once in a newspaper of general circulation in the area at least five (5) days prior to the meeting. The public notice shall also be posted at City Hall, and by announcement on at least one (1) channel of the Grantee's Cable System for five (5) consecutive days prior to the meeting.

#### **SECTION 15. SEVERABILITY**

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Ordinance.

### **ARTICLE II CABLE SYSTEM EXTENSION, OPERATION, STANDARDS AND PROCEDURES**

#### **SECTION 1. SERVICE AVAILABILITY**

The Grantee shall provide Cable Service throughout the entire Franchise area pursuant to the provisions of this Franchise and shall keep a record of all service extended by the Grantee. This record shall be available for inspection by the City at the local office of the Grantee during regular business hours.

##### **A. Line Extensions**

1. In all areas of the Franchise territory, the Grantee shall be required to extend its Cable System pursuant to the following requirements:

- a. Grantee must extend and make Cable Service available to every dwelling unit in all

unserved, developing areas having at least thirty-five (35) homes per cable mile as measured from the existing Cable System, and shall extend its Cable System simultaneously with the installation of utility lines.

b. Grantee must extend and make Cable Service available to any isolated resident requesting connection at the standard connection charge, if the connection to the isolated resident would require no more than a standard one hundred and fifty (150) foot aerial drop line.

2. In areas not meeting the requirement for mandatory extension of service, Grantee shall provide, upon the written request of a potential Subscriber desiring service, an estimate of the costs required to extend Cable Service to said Subscriber. Grantee may require advance payment or assurance of payment satisfactory to Grantee. The amount paid by Subscribers for early extension shall be nonrefundable, and in the event the area subsequently reaches the density required for mandatory extension, such payments shall be treated as consideration for early extension.

3. In cases of new construction or property development where utilities are to be placed underground, the developer or property owner shall give Grantee at least thirty (30) days prior notice of such construction or development, and of the particular date on which open trenching will be available for Grantee's installation of conduit, pedestals and/or vaults, and laterals to be provided at Grantee's expense. Grantee shall also provide specifications as needed for trenching.

4. Costs of trenching and easements required to bring service to the development shall be borne by the developer or property owner; except that if Grantee fails to install its conduit, pedestals and/or vaults, and laterals within five (5) working days of the date the trenches are available, as designated in the notice given by the developer or property owner, then should the trenches be closed after the five-day period, the cost of new trenching is to be borne by Grantee. Except for the notice of the particular date on which trenching will be available to Grantee, any notice provided by City, such as a preliminary plat request shall satisfy the requirement

of reasonable notice if sent to the local general manager or system engineer of Grantee prior to the approval of the preliminary plat request.

B. Special Agreements

Nothing herein shall be construed to prevent Grantee from serving areas not covered under this Section upon agreement with developers, property owners, or residents.

**SECTION 2. CONSTRUCTION AND TECHNICAL STANDARDS**

A. Construction Standard

1. Compliance with Safety Codes

All construction practices shall be in accordance with all applicable sections of the Occupational Safety and Health Act of 1970 and any amendments thereto as well as all State and local codes where applicable.

2. Compliance with Electrical Codes

All installation of electronic equipment shall be of a permanent nature, durable and installed in accordance with the provisions of the National Electric Safety Code as amended.

3. Antennas and Towers

Antenna supporting structures (towers) shall be designed for the proper loading zone as specified in Electronics Industry Association's R.S.-22A Specifications.

4. Compliance with Aviation Requirements

Antenna supporting structures (tower) shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other applicable State or local codes and regulations.

5. Construction Standards and Requirements

All of the Grantee's plant and equipment, including but not limited to the antenna site, head-end and distribution system, towers, house connections, structures, poles, wire, cable, coaxial cable, fixtures and appurtenances shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with good engineering practices, performed by experienced maintenance and construction personnel so as not to endanger or interfere with improvements the municipality may deem proper to make, or to interfere in any manner with the rights of any property owner, or to unnecessarily hinder or obstruct pedestrian or vehicular traffic on municipal properties.

6. Safety, Nuisance, Requirements

The Grantee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage.

B. Network Technical Requirements

The Cable System shall be operated so as to meet or exceed all technical standards of the FCC.

C. Performance Monitoring

1. Test procedures used in verification of the performance criteria set forth herein, if not as set forth in paragraph 76.609, Subpart K of the FCC Rules and Regulations, shall be in accordance with good engineering practice and shall be fully described in an attachment to the annual certificate filed upon request with the City.

2. To the extent that the report of measurements as required above may be combined with any reports of measurements required by the FCC or other regulatory agencies, the City shall accept such combined reports, provided that all standards and measurements herein or hereafter established by the City are satisfied.

3. At any time after commencement of service to Subscribers, the City may require additional tests, full or partial repeat tests, different test procedures, or test involving a specific subscriber's terminal.

Requests for such additional tests will be made on the basis of complaints received or other evidence indicating an unresolved controversy or significant non-compliance, and such tests will be limited to the particular matter in controversy. The City will endeavor to so arrange its requests for such special tests so as to minimize hardship or inconvenience to Grantee or to the Subscriber.

D. Street Occupancy

1. Grantee shall utilize existing poles, conduits and other facilities whenever possible, and shall not construct or install any new, different, or additional poles, conduits, or other facilities whether on public property or on privately-owned property until the written approval of the City is obtained, which approval shall not be unreasonably withheld. However, no location of any pole or wire holding structure of the Grantee shall be a vested interest and such poles or structures shall be removed or modified by the Grantee at its own expense whenever the City reasonably determines that the public convenience would be enhanced thereby.

2. The facilities of the Grantee shall be installed underground in those areas of the City where existing telephone and electric services are both underground at the time of system construction. In areas where either telephone or electric utility facilities are installed aerially at the time of system construction, the Grantee may install its facilities aerially with the understanding that at such time as the existing aerial facilities are required to be placed underground by the City, the Grantee shall likewise place its facilities underground.

3. A Grantee shall notify the City at least ten (10) days prior to the intention of the Grantee to commence any construction in any Streets. The City shall cooperate with the Grantee in granting any permits required, providing such grant and subsequent construction by the Grantee shall not unduly interfere with the use of such Streets and that proposed construction shall be done in accordance with the pertinent provisions of the ordinances of the City.

4. All transmission lines, equipment and structures shall be so installed and located as to

cause minimum interference with the rights and reasonable convenience of property owners and at all times, shall be kept and maintained in a safe, adequate and substantial condition, and in good order and repair. The Grantee shall, at all times, employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public. Suitable barricades, flags, lights, flares or other devices shall be used at such times and places as are reasonably required for the safety of all members of the public. Any poles or other fixtures placed in any public way the Grantee shall be placed in such a manner as not to interfere with the usual travel on such public way.

5. Grantee shall, at its own expense and in a manner approved by the City, restore to the City reasonable standards any damage or disturbance caused to the Streets as a result of its operations or construction on its behalf.

6. Whenever, in case of fire or other disaster, it becomes necessary in the judgment of the Chief of the Fire Department or Chief of the Police Department to remove any of the Grantee's facilities, no charge shall be made by the Grantee against the City for restoration and repair, unless such acts amount to gross negligence by the City.

7. Grantee or its designee shall have the authority to trim trees on public property at its own expense as may be necessary to protect its wires and facilities, subject to the supervision and direction of the City. Trimming of trees on private property shall require written consent of the property owner.

8. The Grantee shall protect, support, temporarily disconnect, relocate, or remove any property of Grantee when, in the opinion of the City the same is required by reason of traffic conditions, public safety, street vacation, freeway or street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power line, signal line, transportation facilities, tracks, or any other types of structure or improvements by governmental agencies whether acting in a governmental or a proprietary capacity,

or any other structure or public improvement, including but not limited to movement of buildings, urban renewal and redevelopment, and any general program under which the City shall undertake to cause all such properties to be located beneath the surface of the ground. The Grantee shall be responsible for any costs associated with these obligations to the same extent all other users of the City rights-of-way are responsible for the costs related to their facilities.

### **SECTION 3. SERVICE AND RATES**

#### A. Office and Phone

The Grantee shall have a locally listed telephone and be so operated that complaints and requests for repairs or adjustments may be received at any time. In addition, the Grantee shall maintain a service during usual business hours, for the receipt of sums due by its Subscribers and shall provide for regular billing of accounts.

#### B. Notification of Service Procedures

The Grantee shall furnish each Subscriber at the time service is installed, written instructions that clearly set forth procedures and furnish information concerning the procedures for making inquiries or complaints, including the Grantee's name, address and local telephone number. Grantee shall give the City thirty (30) days prior notice of any rate increases, channel lineup or other substantive service changes.

#### C. Rates

To the extent that Federal or State law or regulation may now, or as the same may hereafter be amended to authorize the City to regulate the rates for any particular service tiers, service packages, equipment, or any other services provided by Grantee, the City shall have the right to exercise rate regulation to the full extent authorized by law, or to refrain from exercising such regulation for any period of time, at the sole discretion of the City. If and when exercising rate regulation, the City shall abide by the terms and conditions set forth by the FCC.

#### **SECTION 4. CONTINUITY OF SERVICE**

A. It shall be the right of all Subscribers to continue receiving Cable Service insofar as their financial and other obligations to the Grantee are honored. In the event that the Grantee elects to overbuild, rebuild, modify, or sell the Cable System, or the City gives notice of intent to terminate or fails to renew this Franchise, the Grantee shall act so as to ensure that all Subscribers receive continuous, uninterrupted service unless circumstances are beyond the control of the Grantee, unforeseen circumstances, or acts of God.

B. In the event of a change of Grantee, or in the event a new operator acquires the Cable System, the Grantee shall cooperate with the City, new Grantee or operator in maintaining continuity of service to all Subscribers. During such period, Grantee shall be entitled to the revenues for any period during which it operates the Cable System.

C. In the event Grantee fails to operate the Cable System for seven (7) consecutive days without prior approval of the City or without just cause, the City may, at its option, operate the Cable System or designate an operator until such time as Grantee restores service under conditions acceptable to the City or a permanent operator is selected. If the City is required to fulfill this obligation for the Grantee, the Grantee shall reimburse the City for all reasonable costs or damages in excess of revenues from the Cable System received by the City that are the result of the Grantee's failure to perform.

#### **SECTION 5. GRANTEE RULES AND REGULATIONS**

The Grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the Grantee to exercise its rights and perform its obligations under this Franchise, and to assure an uninterrupted service to each and all of its customers. Provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or applicable federal and State laws, rules and regulations.



## **SECTION 6. FRANCHISE FEE**

Grantee shall pay to the City an annual fee in an amount set from time to time by Resolution of the City Council, based on a percentage of the Gross Revenues, which shall not exceed the maximum amount of five percent (5%), pursuant to Section 622 of the Cable Act [47 U.S.C. Section 542]. Provided, however, a copy of the adopting Resolution shall be provided to the Grantee no less than 90 days prior to the effective date of such fee. The initial fee, under this Franchise shall be five percent (5%). Such payment shall be in addition to any other taxes or permit fees owed to the City by the Grantee that are not included as franchise fee under federal law.

## **SECTION 7. PAYMENT TO THE CITY**

### A. Method of Computation

The fee due the City under the provisions of Section 6 above shall be computed and paid on a quarterly basis. Payments shall be made forty-five (45) days after each calendar quarter. Any adjustments of franchise fees to the City based upon the Grantee's review of Gross Revenue shall be paid not later than ninety (90) days after the end of the calendar year to the office of the Treasurer during its regular business hours. The payment period shall commence as of the effective date of the Franchise. In the event of a dispute, the City, if it so requests, shall be furnished a statement of said payment, by a financial representative of the Grantee, reflecting the Gross Revenues and the above charges, deductions and computations for the period covered by the payment.

### B. Acceptance by City

No acceptance of any payment by the City shall be construed as a release or as an accord and satisfaction of any claim the City may have for further or additional sums payable as a franchise fee under this Ordinance or for the performance of any other obligation of the Grantee. The period of limitation, however, for recovery of any franchise fees payable hereunder shall be three (3) years from the date on which payment by the Grantee is due.

C. Failure to Make Required Payment

In the event that any Franchise payment or recomputed payment is not made on or before the dates specified herein, Grantee shall pay an interest charge , computed from such due date, at the annual rate of one percent (1%) over the prime interest rate.

**SECTION 8. TRANSFER OF OWNERSHIP OR CONTROL**

A. The Franchise granted hereunder shall be a privilege to be held for the benefit of the public. Said Franchise cannot in any event be sold, transferred, leased, assigned or disposed of, including but not limited to, by forced or voluntary sale, merger, consolidation, receivership, or other means without the prior consent of the City, and then only under such conditions as the City may establish. Such consent as required by the City shall, however, not be unreasonably withheld or delayed.

B. For the purpose of determining whether it shall consent to such change, transfer, or acquisition of the Franchise, the City may inquire into the legal, technical, and financial qualifications of the prospective party, and the Grantee shall assist the City in any such inquiry.

C. By its acceptance of this Franchise, the Grantee specifically grants and agrees that any such sale, assignment or transfer occurring without prior approval of the Council shall constitute a violation of this Franchise by the Grantee.

D. The foregoing requirements shall not apply to any sale, assignment or transfer to any Person which is owned or controlled by the Grantee, or any Person which owns or controls the Grantee. Grantee shall notify the City thirty (30) days prior to any sale, assignment or transfer.

**SECTION 9. RECORDS, REPORTS AND MAPS**

A. Reports Required

The Grantee shall file with the City:

1. The Grantee's schedule of charges, contract or application forms for regular subscriber

service, policy regarding the processing of subscriber complaints, delinquent subscriber disconnect and reconnect procedures and any other terms and conditions adopted as the Grantee's policy in connection with its Subscribers shall be filed with the City upon written request.

2. All petitions, applications and communications of all types submitted by Grantee to the Federal Communications Commission, Securities and Exchange Commission, or any other Federal or State regulatory commission or agency having jurisdiction over any matter affecting operation of Grantee's system shall be submitted to the City upon written request.

B. Records Required

The Grantee shall at all times maintain:

1. A record of all complaints received and interruptions or degradation of service experienced shall be maintained for one (1) year.

2. A full and complete set of plans, records and "as-built" maps showing the exact location of all Cable System equipment installed or in use in the City, exclusive of Subscriber service drops.

C. Filing

When not otherwise prescribed herein, all matters required to be filed with the City shall be filed with the City Clerk.

D. Inspection of Property and Records

Grantee shall permit any duly authorized representative of the City to examine any and all maps and other records relevant to Grantee's compliance with the Franchise.

**SECTION 10. REMOVAL OF CABLE SYSTEM**

At the expiration of the term for which this Franchise is granted, or upon its termination as provided herein, Grantee shall forthwith, upon notice by the City, remove at its own expense the Cable System from all Streets and public property within the City.

## **SECTION 11. PEG CHANNELS AND COMMUNITY PROGRAMMING**

### A. Access Channels

The Grantee shall provide on the Cable System on the Basic Service Tier one (1) channel for Public, Educational, and Government (“PEG”) Access.

B. The Grantee shall maintain, without charge, one (1) outlet to each School, located within two hundred (200) feet of the Cable System and will provide free Basic Service and Extended Basic Service, for so long as the Cable System remains in operation in the Service area. Any such School may install, at its expense, such additional outlets for classroom purposes as it desires, provided that such installation shall not interfere with the operation of Grantee’s Cable System, and that the quality and manner of installation of such additional connections shall have been approved by the Grantee and shall comply with all City, State and federal laws and regulations.

C. In addition, the Grantee shall furnish to the City, without charge, one outlet of Basic Service and Expanded Basic to City Hall, each Police and Fire Station, and all public libraries within 200 feet of the Cable System. Such obligations of free Cable Service shall not extend to areas of City buildings and offices where the Grantee would normally enter into a commercial contract to provide such Cable Service. Such free outlets and Cable Service may only be used for lawful purposes.

## **ARTICLE III ADMINISTRATION AND REGULATION**

### **SECTION 1. PERFORMANCE EVALUATION SESSIONS**

A. The City and Grantee may hold performance evaluation sessions as may be required by federal and State law or by the City. All evaluation sessions shall be open to the public.

B. All evaluation sessions shall be announced in accordance with the notice requirements

under this Ordinance.

C. Topics which may be discussed at any scheduled session may include, but not be limited to: rates, franchise fees, customer service issues, new technologies, system performance, cable service, including programming offered, privacy provisions, line extension policies, judicial and FCC rulings and Grantee and City rules.

## **SECTION 2. FORFEITURE OR REVOCATION**

### A. Grounds for Revocation

The City reserves the right to revoke the Franchise granted hereunder and rescind all rights and privileges associated with the Franchise in the following circumstances, each of which shall represent a default and breach under this ordinance and the Franchise grant:

1. If the Grantee should default in the performance of any of its material obligations under this Ordinance or under such documents, contracts and other terms and provisions entered into by and between the City and the Grantee.

2. If the Grantee should fail to provide or maintain in full force and effect, the liability and indemnification coverage's as required herein.

3. If the Grantee ceases to provide services for any reason within the control of the Grantee. The Grantee shall not be declared at fault or be subject to any sanction under any provision of this ordinance in any case in which performance of any such provision is prevented for reasons beyond the Grantee's control.

4. If the Grantee evades any of the provisions of this Ordinance or the Franchise Agreement or practices any fraud or deceit upon the City.

### B. Procedure Prior to Revocation

1. The City shall make written demand by certified mail to the Grantee to comply with any

such requirement, limitation, term, condition, rule or regulation and shall provide the Grantee with minimum of 30 days to cure the City's complaint. If the default, failure, refusal or neglect of the Grantee continues for a period of thirty (30) days following such written demand, the City may place its request for termination of the Franchise upon a regular Council meeting agenda. The City shall cause to be served upon Grantee, at least twenty (20) days prior to the date of such Council meeting, a written notice of this intent to request such termination, and the time and place of the meeting, notice of which shall be published by the City Clerk at least once, twenty (20) days before such meeting in a newspaper of general circulation within the City.

2. The Council shall hear any persons interested therein, and shall determine, in its discretion, whether or not any default, failure, refusal or neglect by the Grantee was with just cause.

3. If such default, failure, refusal or neglect by the Grantee was with just cause, the Council shall direct the Grantee to comply within such time and manner and upon such terms and conditions as are reasonable.

4. If the Council shall determine such default, failure, refusal or neglect by the Grantee was without just cause, then the Council may, by resolution, declare that the Franchise of Grantee shall be terminated.

5. Any finding and/or determination by the City in accordance to this Subsection shall be subject to judicial review de novo.

#### C. Restoration of Property

In removing its plant, structures and equipment, the Grantee shall refill, at its own expense, any excavation that shall be made by it and shall leave all public ways and places in as good condition as prevailed prior to the Grantee's removal of its equipment and appliances without affecting the electrical or telephone cable wires, or attachments. The City shall inspect and approve the condition of the Streets and public places; and cables, wires, attachments and poles after removal. The liability, indemnity and insurance as provided herein

shall continue in full force and effect during the period of removal and until full compliance by the Grantee with the terms and conditions of this paragraph and this Ordinance.

D. Restoration by City, Reimbursement of Costs

In the event of a failure by the Grantee to complete any work required under this Section within the time as may be established and to the reasonable satisfaction of the City, the City may cause such work to be done and the Grantee shall reimburse the City the reasonable cost thereof within thirty (30) days after receipt of an itemized list of such costs. The City shall be permitted to seek legal and equitable relief to enforce the provisions of this Section.

E. Extended Operation

Upon the revocation of a Franchise, the City may require the Grantee to continue to operate the Cable System for a period of time not to exceed three (3) months from the date of such revocation. The Grantee shall, as trustee for its successor in interest, continue to operate the Cable System under the terms and conditions of this Ordinance and to provide the regular subscriber service and any and all of the services that may be provided at that time. The City shall be permitted to seek legal and equitable relief to enforce the provisions of this Section.

F. Rights Not Affected

The termination and forfeiture of any Franchise shall in no way affect any of the rights of the City or Grantee under the Franchise or any provision of law.

**SECTION 3. RECEIVERSHIP AND FORECLOSURE**

A. The Franchise herein granted shall at the option of the City, cease and terminate one hundred twenty (120) days after the appointment of a receiver or receivers or trustee or trustees to take over and conduct the business of the Grantee whether in a receivership, reorganization, bankruptcy or other action or

proceeding unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:

1. Such receivers or trustees shall have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Ordinance and the Franchise granted pursuant hereto, and the receivers or trustees within said one hundred twenty (120) days shall have remedied all defaults under the Franchise; and

2. Such receivers or trustees shall, within said one hundred twenty (120) days, execute any agreement duly approved by the Court having jurisdiction in the premises, whereby such receivers or trustees assume and agree to be bound by each and every term, provision and limitation of the Franchise herein granted.

B. In the case of a foreclosure or other judicial sale of the plant, property and equipment of the Grantee, or any substantial part thereof, including or excluding this Franchise, the Council may serve notice of termination upon the Grantee and the successful bidder at such sale, in which event the Franchise herein granted and all rights and privileges of the Grantee hereunder shall cease and terminate thirty (30) days after service of such notice, unless:

1. The Council shall have approved the transfer of this Franchise, as and in the manner in this Ordinance provided and;

2. Such successful bidder shall have covenanted and agreed with the City to assume and be bound by all the terms and conditions of this Franchise.

#### **SECTION 4. COMPLIANCE WITH STATE AND FEDERAL LAWS**

Notwithstanding any other provisions of this Franchise to the contrary, the Grantee shall at all times comply with all laws and regulations of the State of Nebraska and the federal government or any administrative agencies thereof which relate to the conduct of Grantee's system business.

#### **SECTION 5. NON-WAIVER AND DISCLAIMER**



The City and Grantee hereby acknowledge and agree that Grantee shall be providing Broadband Service, which shall include internet protocol television service ("IPTV Service"), under the terms of this Franchise, which is substantively different from Cable Service, and that there are no definitive laws and regulations of the State of Nebraska or the federal government, or any administrative agencies thereof, or orders, rulings, decisions, or other judicial authorities of a court of competent jurisdiction that have settled the issue of whether Grantee's provision of such IPTV Service under this Franchise is subject to the Cable Act. Accordingly, the City and Grantee further acknowledge and agree that by entering into this Franchise, (A) Grantee is not, and shall not, waive any objections, arguments, defenses, or any other legal rights or remedies with respect to the applicability or inapplicability of the Cable Act to Grantee's provision of IPTV Service under this Franchise; (B) Grantee expressly disclaims any consent to the applicability of the Cable Act to Grantee's provision of IPTV Service under this Franchise; and (C) in the event that during the term of this Franchise there is a substantive change in the current state of the law or statutory or regulatory authority of the State of Nebraska or federal government, or any administrative agencies thereof, with respect to the applicability of the Cable Act to Grantee's provision of IPTV Service under this Franchise, the City and Grantee shall work in good faith to either amend this Franchise or enter into a new agreement to reflect such substantive change.

#### **SECTION 6. INTEGRATION**

This Agreement sets forth the entire agreement between the parties respecting the subject matter hereof. All agreements, covenants, representations and warranties, express and implied, oral and written, of the parties with regard to the subject matter hereof are contained herein. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made by any party to another with respect to the matter of this Agreement. All prior and contemporaneous conversations, negotiations, possible and alleged agreements, representations, covenants and warranties with respect to the subject matter hereof are waived, merged herein and therein and superseded hereby and thereby. This is an integrated Agreement.

**SECTION 7. EFFECTIVE DATE**

This Franchise shall take effect and be in force from and after final passage thereof, as provided by law, provided that within forty-five (45) days after the date of final passage of the Franchise, the Grantee shall file with the City its unconditional Acceptance of the Franchise.

Passed and Approved by the Council of the City of Gothenburg, Nebraska on this 22<sup>nd</sup> day of July, 2014.

**CITY OF GOTHENBURG, NEBRASKA**

By: Joyce E Hudson  
Title: Mayor

(SEAL)

Attest:

Donna D. Malysmpke  
City Clerk

This Franchise Agreement is hereby accepted by the Grantee on this 22<sup>nd</sup> day of July, 2014.

**PINPOINT COMMUNICATIONS, INC.**

By: [Signature]

Title: President

Approved as to form  
[Signature]  
city attorney