

ORDINANCE NO. _____

AN ORDINANCE TO APPROVE CABLE TELEVISION FRANCHISE AGREEMENT WITH CHARTER COMMUNICATIONS; TO REPEAL ALL ORDINANCES OR SECTIONS OF ORDINANCES IN CONFLICT, TO PROVIDE FOR AN EFFECTIVE DATE, AND FOR PUBLICATION IN PAMPHLET FORM

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF LEXINGTON, NEBRASKA, as follows:

Section 1. That the Franchise Agreement with Charter Communications for cable television services, as attached hereto and made a part hereof by reference, is hereby approved, and the Mayor is authorized and directed to execute said agreement on behalf of the City of Lexington, Nebraska;

Section 2. That all other Ordinances or sections of Ordinances in conflict herewith, are hereby repealed;

Section 3. That this Ordinance shall be published in pamphlet form and take effect as provided by law.

Passed and approved this ___ day of _____, 2012

Mayor

Attest:

City Clerk

FRANCHISE AGREEMENT

This Franchise Agreement (“ Franchise”) is between the City of Lexington, Nebraska, hereinafter referred to as the “Grantor” and CC VI, LLC, locally known as CHARTER COMMUNICATIONS, hereinafter referred to as the “Grantee.”

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

1. **Definitions:**

- a. “Cable Act” means the Cable Communications Policy Act of 1984, P.L. 98-549, 47 U.S.C. §521 Supp., as it may be amended or superseded.
- b. “Cable System,” “Cable Service,” and “Basic Cable Service” shall be defined as set forth in the Cable Act.
- c. “Franchise” means the authorization granted hereunder of a franchise, privilege, permit, license or otherwise to construct, operate and maintain a Cable System within the Service Area.
- d. “Gross Revenues” means the monthly Cable Service revenues received by Grantee from Subscribers of the Cable System; provided, however, that such phrase shall not include revenues received from national advertising carried on the Cable System. All revenues, as determined in accordance with generally accepted accounting principles, actually received by Grantee from Subscribers residing within the Service Area for Cable Services purchased by such Subscribers on a regular, recurring monthly basis. Gross Revenues shall not include (1) any taxes, fees or assessments collected by the Grantee from Subscribers for pass-through to a government agency, including the franchise fee and the FCC user fee; (2) bad debt; (3) credits, refunds and deposits paid to Subscribers; and (4) any exclusion available under applicable state law.
- e. “Service Area” shall mean the geographic boundaries of the Grantor.
- f. “Streets” means the public streets, avenues, highways, boulevards, concourses, driveways, bridges, tunnels, parks, parkways, waterways, alleys, all other rights-of-way and easements, and the public grounds, places or water within the geographic boundaries of Grantor.

- g. “Subscriber” means any person lawfully receiving any Cable Service from the Grantee.
2. **Granting of Franchise.** The Grantor hereby grants to Grantee a non-exclusive Franchise for the use of the Streets and dedicated easements within the Service Area for the construction, operation and maintenance of the Cable System, upon the terms and conditions set forth herein. Nothing in this Franchise shall be construed to prohibit the Grantee from offering any service over its Cable System that is not prohibited by federal or state law.
3. **Term.** The Franchise shall be for a term of five (5) years, commencing on the Effective Date of this Franchise as set forth in Section 14. This Franchise will be automatically extended for three additional terms of *five (5)* years from such effective date, unless either party notifies the other in writing of its desire to not exercise this automatic extension (and enter renewal negotiations under the Cable Act) at least three (3) years before the expiration of this Franchise. If such a notice is given, the parties will then proceed under the federal Cable Act renewal procedures.
4. **Use of the Streets and Dedicated Easements.**
- a. Grantee shall have the right to use the Streets of the Grantor for the construction, operation and maintenance of the Cable System, including the right to repair, replace and enlarge and extend the Cable System, provided that Grantee shall utilize the facilities of utilities whenever practicable.
- b. The facilities of the Grantee shall be installed underground in those Service Areas 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 Grantor, the Grantee shall likewise place its facilities underground.
- c. Grantee shall have the right to remove, trim, cut and keep clear of the Cable System, the trees in and along the Streets of the Grantor.
- d. Grantee in the exercise of any right granted to it by the Franchise shall, at no cost to the Grantor, promptly repair or replace any facility or service of the Grantor which Grantee damages, including but not limited to any Street or sewer, electric facility, water main, fire alarm, police communication or traffic control.
- e. Upon its receipt of reasonable advance notice, not to be less than five (5) business days, the Grantee shall, at its own expense, protect, support, temporarily disconnect, relocate in the Public Way, or remove from the Public Way, any property of the Grantee when lawfully required by Franchising Authority by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers,

drains, gas or water pipes, or any other type of structures or improvements by the Franchising Authority; but, the Grantee shall in all cases have the right of abandonment of its property. If public funds are available to any company using such street, easement, or right-of-way for the purpose of defraying the cost of any of the foregoing, such funds shall also be made available to the Grantee.

The Grantee shall on the request of any person holding a building moving permit issued by the Franchising Authority, temporarily raise or lower its wires to permit the moving of such building, provided: (a) the expense of such temporary raising or lowering of wires is paid by said person, including, if required by the Grantee, making such payment in advance; and (b) the Grantee is given not less than ten (10) business days advance written notice to arrange for such temporary wire changes.

5. Maintenance of the System.

- a. Grantee shall at all times employ ordinary care in the maintenance and operation of the Cable System so as not to endanger the life, health or property of any citizen of the Grantor or the property of the Grantor
- b. All construction practices and installation of equipment shall be done in accordance with all applicable sections of the National Electric Safety Code.
- c. The Cable System shall be designed, constructed and operated so as to meet those technical standards adopted by the FCC relating to Cable Systems contained in part 76 of the FCC's rules and regulations as may, from time to time, be amended.

6. Service.

- a. The Grantee shall make Cable Service distributed over the Cable System available to every residence within the Service Area where there is a minimum density of at least *thirty (30)* residences per linear strand mile of cable (excluding any home subscribing to any satellite service) as measured from Grantee's closest trunk line or distribution cable that is actively delivering Cable Service as of the date of such request for service. If such residence is located within 125 feet of Grantee's feeder cable, the Cable Service will be provided at Grantee's published rates for standard installation. Notwithstanding the foregoing, the Grantee shall have the right, but not the obligation, to extend the Cable System into any portion of the Service Area where another operator is providing Cable Service, or into any annexed area which is not contiguous to the present Service Area of the Grantee. Grantee shall not be obligated to provide Cable Service into any area which is financially or technically infeasible.
- b. The Grantor shall provide prior notice to the Grantee of its annexation of any contiguous territory which is being provided Cable Service by the Grantee or its affiliates. Such annexed area will be subject to the provisions of the franchise which previously covered that area throughout the term of this Franchise, although the Grantor will replace the previous franchise authority. Grantee shall

pay the Grantor franchise fees on revenue received from the operation of the Cable System to provide Cable Services in the Service Area and in any area annexed by the Grantor if the Grantor has provided written notice to the Grantee prior to the date of such annexation

- c. Grantee shall provide Basic Cable Service and one free outlet to each of the following public facilities located within one hundred twenty-five (125) feet of existing service lines of the Grantee and within the jurisdictional limits of the Grantor: City Hall and Police Station location at 406 E. 7th Street, Fire Station location(s) at 600 N. Tyler Street, 606 N. Tyler Street, and Fire Station Office location at 406 E. 7th Street, Community Service Building (Public Works) location at 801 W. Vine Street, Grand Generation Center location at 407 E. 6th Street, Morton Elementary School location at 505 S. Lincoln Street, St. Ann Private School location at 1000 Taft Street, Pershing Elementary School location at 1104 N. Tyler Street, Sandoz Elementary School location at 1711 N. Erie Street, Bryan Elementary location at 1003 N. Harrison, Lexington Child Development Center location at 1609 N. Erie Street, Lexington High School location at 705 E. 13th Street, Lexington Middle School location at 1100 N. Washington Street, Lexington Schools Office location at 300 S. Washington Street, Parent Student Resource Center (PSRC) location at 103 E. 10th Street, Dawson County Opportuntiy Center location at 1501 Plum Creek Parkway. Equipment, additional services and programming tiers will be billed according to Grantee’s current pricing. No monthly service fee shall be charged for such outlet. Grantee shall provide Basic Cable Service to new construction hereafter for similar public facilities; provided they are within one hundred twenty-five (125) feet of the existing service lines of Grantee.

7. Insurance/Indemnity.

- a. 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.

- b. The Grantor shall be added as an additional insured, arising out of work performed by Charter, to the above Commercial General Liability, Auto Liability and Umbrella Liability insurance coverage.
- c. The Grantee shall furnish the Grantor with current certificates of insurance evidencing such coverage upon request.
- d. Grantee hereby agrees to indemnify and hold the Grantor, including its agents and employees, harmless from any claims or damages resulting from the actions of Grantee in constructing, operating or maintaining the Cable System. Grantor agrees to give the Grantee written notice of its obligation to indemnify Grantor within ten (10) days of receipt of a claim or action pursuant to this section. Notwithstanding the foregoing, the Grantee shall not be obligated to indemnify Grantor for any damages, liability or claims resulting from the willful misconduct or negligence of Grantor or for the Grantor's use of the Cable System.

8. Revocation

- a. Prior to revocation or termination of the Franchise, the Grantor shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of a pattern of noncompliance by the Grantee, including one or more instances of substantial noncompliance with a material provision of the Franchise. The notice shall set forth the exact nature of the noncompliance. The Grantee shall have sixty (60) days from such notice to either object in writing and to state its reasons for such objection and provide any explanation or to cure the alleged noncompliance. If Grantee has not cured the breach within such sixty (60) day time period or if the Grantor has not otherwise received a satisfactory response from Grantee, the Grantor may then seek to revoke the Franchise at a public hearing. The Grantee shall be given at least thirty (30) days prior written notice of such public hearing, specifying the time and place of such hearing and stating its intent to revoke the Franchise.
- b. At the hearing, the Grantor shall give the Grantee an opportunity to state its position on the matter, present evidence and question witnesses, after which it shall determine whether or not the Franchise shall be revoked. The public hearing shall be on the record and a written transcript and a certified copy of the findings shall be made available to the Grantee within ten (10) business days. The Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the Grantor *de novo*.
- c. Upon revocation of the Franchise, Grantee may remove the Cable System from the Streets of the Grantor, or abandon the Cable System in place.

9. Equal Protection. If any other provider of cable services or video services (without regard to the technology used to deliver such services) is lawfully authorized by the

Grantor or by any other state or federal governmental entity to provide such services using facilities located wholly or partly in the public rights-of-way of the Grantor, the Grantor shall, within thirty (30) days of a written request from Grantee, modify this Franchise to insure that the obligations applicable to Grantee are no more burdensome than those imposed on the new competing provider. If the Grantor fails to make modifications consistent with this requirement, Grantee's Franchise shall be deemed so modified thirty (30) days after the Grantee's initial written notice. As an alternative to the Franchise modification request, the Grantee shall have the right and may choose to have this Franchise with the Grantor be deemed expired thirty (30) days after written notice to the Grantor. Nothing in this Franchise shall impair the right of the Grantee to terminate this Franchise and, at Grantee's option, negotiate a renewal or replacement franchise, license, consent, certificate or other authorization with any appropriate government entity.

10. **Confidentiality.** If Grantee provides any books and records to the Grantor, the Grantor agrees to treat as confidential such books, records or maps that constitute proprietary or confidential information. Until otherwise ordered by a court or agency of competent jurisdiction, the Grantor agrees that, to the extent permitted by state and federal law, it shall deny access to any of Grantee's books and records marked confidential to any person.

11. **Notices, Miscellaneous.**

a. Every notice served upon the Grantor shall be delivered or sent by certified mail, return receipt requested, to:

City of Lexington
P.O. Box 70
406 East Seventh Street
Lexington, NE 68850-0070
Attention: City Manager

and every notice served upon Grantee shall be delivered or sent by certified mail, return receipt requested, to:

Charter Communications
809 Central Avenue
Kearney, NE 68847
Attention: Director of Operations

With a copy to: Charter Communications
12405 Powerscourt Drive
St. Louis, MO 63131
Attention: Vice President of Government Affairs

- b. All provisions of this Franchise shall apply to the respective parties, their lawful successors, transferees and assigns.
 - c. If any particular section of this Franchise shall be held invalid, the remaining provisions and their application shall not be affected thereby.
 - d. In the event of any conflict between this Franchise and any Grantor ordinance or regulation, this Franchise will prevail.
- 12. Force Majeure.** The Grantee 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, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control. This provision includes work delays caused by waiting for utility providers to service or monitor their utility poles to which Grantee's Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.
- 13. Franchise Fee.**
- a. Grantee shall pay to the Grantor annually an amount equal to five percent (5%) of the Gross Revenues for such calendar year.
 - b. Each year during which the Franchise is in force, Grantee shall pay Grantor no later than ninety (90) days after the end of each calendar year the franchise fees required by this section, together with a financial statement showing total Gross Revenues derived from the Cable System during such year. The Grantor shall have the right to review the previous year's books of the Grantee to the extent necessary to ensure proper payment of the fees payable hereunder.
- 14. Effective Date.** The Franchise granted herein will take effect and be in full force from such date of acceptance by Grantee recorded on the signature page of this Franchise.
- 15. Acceptance and Entire Agreement.** The Grantor and the Grantee, by virtue of the signatures set forth below, agree to be legally bound by all provisions and conditions set forth in this Franchise. The Franchise constitutes the entire agreement between the Grantor and the Grantee. No modifications to this Franchise may be made without an appropriate written amendment signed by both parties

Considered and approved this ___ day of _____, 20__

City of Lexington, Nebraska

Signature: _____

Name/Title _____

Accepted this ___ day of ____, 20__, subject to applicable federal, state and local law.

CC VI, LLC, I/k/a Charter Communications

Signature: _____

Name/Title: _____

Date: _____