**Chapter 13**

**FRANCHISES**

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**Chapter 13**

**FRANCHISES**

**ARTICLE I**

**CABLE TELEVISION SERVICE**

**Sec. 13-1. Title and purposes of ordinance.**

**(1) Title.**

This Ordinance shall be known as the Potosi, MO Cable Television Franchise Ordinance.

**(2) Purposes.**

The purposes of this Ordinance are: a) to establish the terms and conditions under which a cable television system must operate within Potosi, MO (hereafter referred to as the "City", "Franchising Authority" or "Grantor"), b) to provide for the payment of a franchise fee to the City for costs associated with administering and regulating the system; and; c) to grant a cable television franchise to FALCON TELECABLE (hereafter referred to as "Falcon" or "Grantee"). (Ord. 668, §1)

**Sec. 13-2. Definitions.**

For the purposes of this Ordinance the following terms, phrases, words and their derivations shall have the meaning defined herein, unless the context clearly indicates that another meaning is intended. 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.

(1) "Cable Act" means *The Cable Communications Policy Act of 1984* as amended by *The Cable Television Consumer Protection and Competition Act of 1992*, P.L. 102-385, 47 U.S.C. 521 *et seq*.

(2) "Cable Television System" or "Cable Communications System" means any non-broadcast facility consisting of a set of transmission paths and associated signal reception, transmission and control equipment, that is designed to distribute to subscribers or other users audio, video and other forms of communications services via electronic or electrical signals.

(3) "Channel" is a band of frequencies, in the electromagnetic spectrum, capable of carrying one audio-visual television signal.

(4) "City" means Potosi, MO in its present form or in any later reorganized, consolidated, enlarged or reincorporated form, which is legally authorized to grant a cable television franchise under state and federal law pursuant to this ordinance. The City may also be referred to as the "Franchising Authority" or "Grantor".

(5) "City Council" means the City Council of Potosi, MO.

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(6) "Falcon", means FALCON TELECABLE, which may also be referred to as "Grantee".

(7) "FCC" means the Federal Communications Commission.

(8) "Franchise" means the rights granted pursuant to this Ordinance to construct, own and operate a cable television system along the public ways in the City, or within specified areas in the City.

(9) "Franchise Area" means that portion of the City for which a franchise is granted under the authority of this Ordinance. If not otherwise stated in an exhibit to this Ordinance, the Franchise Area shall be the legal and geographic limits of the City, including all territory which may be hereafter annexed to the City.

(10) "Franchising Authority" means Potosi, MO, its City Council acting as the City's duly elected governing body, its lawful successor or such other duly authorized body or individual who has the legal authority to grant a cable television franchise pursuant to this ordinance.

(11) "Grantee" means a person or business entity or its lawful successor or Assignee which has been granted a franchise by the City Council pursuant to this Ordinance.

(12) "Gross Subscriber Receipts" as the term is used in calculating franchise fees means revenues actually received by the Grantee from cable television services it provides to its subscribers in Potosi after deducting the following: a) any fees or assessments levied on subscribers or users of the system which are collected by the Grantee for payment to a governmental entity; b) franchise fees paid by the Grantee to the City; c) state or local sales or property taxes imposed on the Grantee and paid to a governmental entity; and d) federal copyright fees paid by the Grantee to the Copyright Tribunal in Washington, DC.

(13) "Public Way" or "Right-of-Way" means the surface, the air space above the surface and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, park, parkways, waterways, or other public right-of-way including public utility easements or rights-of-way and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the City which shall entitle the City and the Grantee to the use thereof for the purpose of installing and maintaining the Grantee's cable television system.

(14) "School" means any public elementary or secondary school.

(15) "Subscriber" means any person who receives monthly cable television service provided by the Grantee's cable television system. (Ord. 668, §2)

**Sec. 13-3. Franchises: Applications and criteria for grant.**

**(1) Franchise to operate required.**

It shall be unlawful to operate a cable television system within the City unless a valid franchise has first been obtained from the Franchising Authority pursuant to the terms of this Ordinance. A franchise granted pursuant to this Ordinance shall authorize the Grantee to provide cable television services within the City and to charge subscribers for such services. It shall also authorize and permit the Grantee to traverse any portion of the City in order to provide service outside the City. Unless otherwise specified, the Franchise Area shall be the legal boundaries of the City.

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**(2) Application procedures and criteria.**

An application for a new cable television franchise shall be submitted to the Franchising Authority in a form specified by or acceptable to the City, and in accordance with procedures and schedules established by the Franchising Authority. The Franchising Authority may request such facts and information as it deems appropriate.

(a) Upon request, any applicant shall furnish to the Franchising Authority a map of suitable scale, showing all roads and public buildings, which indicates the areas to be served and the proposed dates of commencement of service for each area. The proposed service area shall be subject to approval by the Franchising Authority. If approved, the service area shall be incorporated into any franchise granted pursuant to this Ordinance. If no service area is specifically delineated in a franchise, it shall be considered to be coterminous with the boundaries of the City.

(b) After receiving an application for a franchise, the Franchising Authority shall examine the legal, financial, technical and character qualifications of the applicant. The Franchising Authority may grant one or more non-exclusive franchises creating a right to construct and operate a cable television system within the public ways of the City, subject to the provisions of this Section.

(c) In the event an application is filed proposing to serve a franchise area which overlaps, in whole or in part, an existing Grantee's franchise area, a copy of such application shall be served upon any existing Grantee by the City by registered or certified mail. Such notice shall be considered a condition precedent to consideration of the application for a franchise by the Franchising Authority.

(3) **Competing or overlapping franchises.**

(a) Any franchise granted by the Franchising Authority shall be non-exclusive. However, while the Franchising Authority may grant more than one franchise, nothing in this ordinance shall be construed to require it to grant more than one franchise if the Franchising Authority determines pursuant to the procedures established in this section that granting additional franchises would be detrimental to the public interest.

(b) If one or more competing or overlapping franchises are granted, the Franchising Authority shall not grant such a franchise on terms or conditions which are either more favorable or less burdensome than those granted under any existing franchise or ordinance. Any franchise which may be granted shall require the new Grantee to provide cable service to the entire franchise area then served by the existing Grantee. Moreover, an existing Grantee may, at its discretion, comply with the most favorable terms contained in any subsequent franchise granted by the Franchising Authority.

(i) Since competing or overlapping franchises may have an adverse impact on the public rights-of-way, on the quality and availability of communications services to the public and may adversely affect the existing operator's ability to continue to provide the services and facilities it is presently providing under this Ordinance, the Franchising Authority may issue a franchise in an area where another Grantee is operating only following a public hearing to consider the potential impact which the grant of an additional franchise may have on the community. In considering whether to grant one or more additional franchises, the Franchising Authority shall specifically consider, and address in a written report, the following issues:

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(ii) The positive and/or negative impact of an additional franchise on the community.

(iii) The ability and willingness of the specific applicant in question to provide cable television service to the entire franchise area which is served by the existing cable operator. The purpose of this subsection is to ensure that any competition which may occur among Grantees will be on equal terms and conditions so as not to give a competitive advantage to one Grantee over another.

(iv) The amount of time it will take the applicant to complete construction of the proposed system and activate service in the entire franchise area; and, whether the applicant can complete construction and activation of its system in a timely manner.

(v) The financial capabilities of the applicant and its guaranteed commitment to make the necessary investment to erect, maintain and operate the proposed cable TV system for the duration of the franchise term. In order to ensure that any prospective Grantee does have the requisite current financial capabilities, the Franchising Authority may request equity and debt financing commitment letters, current financial statements, bonds, letters of credit or other documentation to demonstrate to the Franchising Authority's satisfaction that the requisite funds to construct and operate the proposed system are available.

(vi) The quality and technical reliability of the proposed system, based upon the applicant's plan of construction and the method of distribution of signals, and the applicant's technical qualifications to construct and operate such system.

(vii) The experience of the applicant in the erection, maintenance and operation of a cable television system.

(viii) The capacity of the public rights-of-way to accommodate one or more additional cable systems and the potential disruption of those public rights-of-ways and private property that may occur if one or more additional franchises are granted.

(ix) The disruption of existing cable television service and the potential that the proposed franchise would adversely affect the residents of the City.

(x) The likelihood and ability of the applicant to continue to provide competing cable television service to subscribers within the entire franchise area for the duration of the franchise.

(xi) Such other information as the Franchising Authority may deem appropriate to be considered prior to granting any competing or overlapping franchise.

**(4) Permits for non-franchised entities.**

The Franchising Authority may issue a license, easement or other permit to a person other than the Grantee to permit that person to traverse any portion of the Grantee's franchise area within the City in order to provide service outside, but not within the City. Such license

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or easement, absent a grant of a franchise in accordance with this Ordinance, shall not authorize nor permit said person to provide cable television service of any type to any home or place of business within the City nor render any other service within the City. (Ord. 668, §3)

**Sec. 13-4. Franchise granted under this Ordinance.**

Pursuant to the terms of this Ordinance, a franchise is hereby granted to FALCON TELECABLE (which may be referred to herein as "Falcon" or "Grantee") to operate and maintain a cable television system in the City for a period of twenty (20) years commencing on the date of adoption of this ordinance. Falcon shall have the option to renew this franchise for an additional term of five (5) years, provided that it is in substantial compliance with the material terms of this ordinance at the time of its expiration. (Ord. 668, §4)

**Sec. 13-5. Franchise fee.**

**(1) Payment of franchise fee.**

The Grantee shall pay a franchise fee to compensate the City for all costs associated with administering and regulating the cable system. The amount of the franchise fee shall be three percent (3%) of the Grantee's annual Gross Subscriber Receipts, as defined herein. Such fee shall be paid on a quarterly basis. Grantee shall be entitled to list the franchise fee as a separate line item on monthly bills.

**(2) Reporting and auditing of fee payments.**

At the Franchising authority's request, the Grantee shall file a report showing Grantee's Gross Subscriber Receipts for the calendar year and the amount of franchise fees due to the City. Such reports may be requested once per calendar year. The Grantee shall have an obligation to maintain financial records of its Gross Subscriber Receipts and Grantee fee payments for audit purposes for a period of three years, and the Franchising Authority shall have the right to audit the Grantee's books at the offices where such books are maintained. (Ord. 668, §5)

**Sec. 13-6. Subscriber rates.**

(1) All charges to subscribers shall be consistent with a schedule of fees for services offered and established by the Grantee. Rates shall be nondiscriminatory in nature and uniform to persons of like classes under similar circumstances and conditions.

(2) The Grantee will provide the City with thirty (30) days advance written notice of any change in rates and charges whenever possible.

(3) Grantee may offer different or discounted rates at its discretion for promotional purposes and may establish different rates for different classes of subscribers where appropriate, such as offering discounted rates to low income individuals or groups or bulk rates to multiple unit dwellings.

(4) Grantee shall inform each new subscriber of all applicable fees and charges for providing cable television service.

(5) Grantee may, at its own discretion and in a non-discriminatory manner, waive,

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reduce or suspend connection fees, monthly service fees or other charges on a one time or monthly basis for promotional purposes.

(6) Grantee may refuse to provide service to any person because a prior account with that person remains due and owing.

(7) A Grantee may offer service which requires advance payment of periodic service charges.

(8) The Grantee shall provide refunds to subscribers in the following cases:

(a) If the Grantee fails within a reasonable time to commence service requested by a subscriber, it will refund all deposits or advance charges that the subscriber has paid in connection with the request for such service at the request of the subscriber.

(b) If a subscriber terminates any service at any time and has a credit balance for deposits or unused services, the Grantee will, upon notice from the subscriber and upon return of all of Grantee's equipment, refund the appropriate credit balance to the subscriber. The subscriber will be responsible for furnishing the Grantee a proper address to which to mail the refund.

(c) If any subscriber's cable service is out of order for more than 48 consecutive hours during the month due to technical failure, damage, or circumstances within the control of the Grantee, the Grantee will credit the account of that subscriber on a pro rata basis upon the subscribers written request. The credit will be calculated using the number of (24) hour periods that service is impaired and the number of channels on which service is impaired as a fraction of the total number of days in the month that the service impairment occurs and the total number of channels provided by the system in the absence of an impairment. (Ord. 668, §6)

**Sec. 13-7. Customer service and consumer protection.**

**(1) Office location and telephone service.**

Grantee shall maintain an office in sufficient proximity to the City to permit Grantee's customer service and technical personnel to promptly respond to all customer service requests or technical problems which may arise, as further described below. Grantee shall maintain telephone answering service or an answering machine to receive service calls twenty-four (24) hours per day. A listed local telephone number or toll free (800) number shall be made available to subscribers for service calls. Corrective action shall be completed as promptly as practicable.

(a) In establishing response time to service or repair calls, the Grantee may differentiate between service problems unique to a single household as compared to problems caused by a service outage which affects a large number of subscribers ("area outage"). An "area outage" is defined as an outage of all cable channels in four (4) or more residences in the same neighborhood or area which is caused by a problem with the cable system, rather than being caused by the subscriber or by a cause beyond the Grantee's control, such as a loss of power from the local electric company.

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(b) All area outages shall be responded to as soon as possible after notification on a 24 hour a day, 7 day a week basis. Designated technicians shall be on call 24 hours a day to respond when notified by phone or paged by Grantee or an answering service employee. Technicians are expected to repair the problem found and have the system operational as soon as possible. Except for circumstances beyond the Grantee's control such as acts of God, weather, wars, riots and civil disturbances, the Grantee shall be capable of locating and correcting system malfunctions promptly.

**(2) Consumer protection.**

The Grantee shall not, without good cause, fail to make available cable service to prospective subscribers nor shall the Grantee terminate service without good cause. Service shall be provided to all interested customers where economically feasible and consistent with the line extension provisions contained in this Ordinance.

(a) Unless a written contract exists between the Grantee and a subscriber, service shall be on a month-to-month basis.

**(3) Protection of privacy.**

The Grantee and the Franchising Authority will constantly guard against possible abuses of the right of privacy or other rights of any subscriber or person. In particular, the Grantee shall comply with the privacy provisions of the Cable Communications Policy Act of 1984, 47U.S.C.551.

(a) Grantee shall not permit the transmission of any signal – aural, visual or digital – from any subscriber's premises without first obtaining the informed consent of the subscriber, which shall not have been obtained from the subscriber as a condition of any service for which transmission is not an essential element. The request for such consent shall be contained in a separate document which enumerates and describes the transmissions being authorized and includes a prominent statement that the subscriber is authorizing the permission in full knowledge of its provision and shall be revocable at any time by the subscriber without penalty of any kind whatsoever. This provision is not intended to prohibit the use or transmission of signals useful only for the control or measurement of system performance or used only for billing subscribers or providing basic or optional services.

(b) Grantee shall not permit the use of any special terminal equipment in any subscriber's premises that shall permit transmission from the subscriber's premises of two-way services utilizing aural, visual or digital signals without first obtaining written permission of the subscriber as provided in subparagraph (a) of this section.

(c) 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 list which identifies the viewing habits or responses of individual subscribers. (Ord. 668, §7)

**Sec. 13-8. Extension of cable service.**

**(1) Extension of service.**

(a) A Grantee which is not already serving the entire franchise area shall provide service to all portions of the franchise area reaching a minimum density of thirty (30) dwelling

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units per linear strand mile, as measured from the nearest system trunk line, within twelve (12) months after the grant of a franchise.

(b) Grantee shall provide aerial or buried drop lines to new subdivisions within the franchise area at the request of the developer provided that the developer contracts and agrees with the Grantee to pay the cost of the extension of the service.

(c) Grantee shall extend and make cable television service available to any resident within the franchise area who requests connection at the standard connection charge if the connection to the resident would require no more than a standard one hundred and fifty (150) foot aerial drop or a seventy-five (75) foot buried drop line or extension from the nearest feeder cable. With respect to requests for connection requiring an aerial or buried drop line in excess of the maximum standard distance, Grantee shall extend and make available cable television service to such residents at a connection charge not to exceed its actual costs for the distance exceeding the standard one hundred and fifty (150) feet of aerial or seventy-five (75) feet of underground cable respectively.

(d) In areas with fewer than thirty (30) residential units per proposed cable bearing strand mile, Grantee shall offer a cost-sharing arrangement with residents. A dwelling unit will be counted for this purpose if its lot fronts a street. The cost-sharing arrangement shall consist of the following:

(i) At the request of a resident desiring service, Grantee shall determine the cost of the plant extension required to provide service to the potential subscriber from the closest point on the cable system where it is technically feasible. The cost of construction shall be allocated based on the following formula:

(ii) If a request for extension of service into a residential area requires the construction of cable plant which does not pass at least thirty (30) potential subscribers per proposed cable bearing strand mile, Grantee and residents who agree to subscribe to cable service will each bear their proportionate share of construction costs. For example, if there are five (5) dwelling units per proposed cable bearing strand mile, Grantee's share will equal 5/30ths or one sixth (1/6) of the construction cost. The remaining cost will be shared equally by each subscriber.

(iii) Should additional residents actually subscribe to cable television service in areas where subscribers have already paid a proportionate share under the extension cost sharing formula, subscribers who have previously paid a proportionate share under the extension formula shall be reimbursed *pro* *rata* for their contribution or a proportional share thereof. In such case, the *pro* *rata* shares shall be recalculated and each new subscriber shall pay the new *pro* *rata* share, and all subscribers who previously paid a proportionate share shall receive *pro* *rata* refunds. In the event such subscribers (or prior subscriber) have been disconnected or has moved and owes the Grantee money which has not been recovered, Grantee shall have the right to first apply the refund to amounts owed the Grantee and give the balance, if any to the subscriber. At such time as there are thirty (30) potential subscribers per cable bearing strand mile, the subscribers shall receive their *pro rata* share of construction costs. In any event, one (1) year after the completion of a project, subscribers who have paid a share of line extension costs are no longer eligible for refunds, and the amounts paid in construction costs will be credited to the plant account of Grantee.

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(iv) Where the density of residential dwelling and occupied commercial or industrial structures, adverse terrain, or other factors render extension of the system and offering of cable service impractical, technically infeasible or would create an economic hardship, the Franchising Authority may, upon petition of the Grantee, either waive the extension of the system into such areas, or allow the extension and offer of service on special terms or conditions which are reasonable and fair to the Franchising Authority, the Grantee and potential subscribers in such areas.

**(2) Free basic cable service to public buildings.**

Grantee shall provide, without charge, one service outlet activated for basic subscriber service to each police station, fire station, public school, public library and the City office. If it is necessary to extend Grantee's trunk or feeder lines more than two hundred (200) feet solely to provide service to any such school or public building, the City or the building owner or occupants shall have the option of either paying Grantee's direct costs for line extensions in excess of two hundred (200) feet or releasing the Grantee from the obligation to provide service to such building. Furthermore, Grantee shall be permitted to recover the direct cost of installing cable service, when requested to do so, in order to provide: a) more than one outlet, b) inside wiring, or c) a service outlet requiring more than two hundred (200) feet of drop cable to any public building. (Ord. 668, §8)

**Sec. 13-9. Insurance and indemnification.**

**(1) Insurance.**

Within ninety (90) days following the grant of a franchise, the Grantee shall obtain the following insurance policies:

(a) A general comprehensive liability policy indemnifying, defending and saving harmless the City, its officers, boards, commissions, agents or employees from any and all claims by any person whatsoever on account of injury to or death of a person or persons occasioned by the operations of the Grantee under the franchise herein granted, or alleged to have been so caused or occurred, with a minimum liability of five hundred thousand dollars ($500,000) per personal injury, death of any one person or damage to property and one million dollars ($1,000,000) for personal injury, death of any two or more persons in any one occurrence or damage to property.

(i) All insurance policies called for herein shall be in a form satisfactory to the Franchising Authority and shall require thirty (30) days written notice of any cancellation to both the Franchising Authority and the Grantee. The Grantee shall, in the event of any such cancellation notice, obtain, pay all premiums for, and file with the Franchising Authority, written evidence of the issuance of replacement policies within thirty (30) days following receipt by the Franchising Authority or the Grantee of any notice of cancellation.

(ii) In recognition of the foregoing provision each party agrees to cause their respective insurance carriers to waive any rights of subrogation.

**(2) Indemnification.**

The Grantee, by its acceptance of a franchise granted pursuant to this Ordinance, shall indemnify and hold harmless the City, its officials, boards, commissions and employees against any and all claims, suits, causes of action, proceedings, and judgments for damage

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arising out of the award of a franchise to the Grantee and its operation of the cable television system under the franchise. These damages shall include, but not be limited to, penalties arising out of copyright infringements and damages arising out of any failure by Grantee to secure consents from the owners, authorized distributors or licensees of programs to be delivered by the Grantee's cable television system whether or not any act or omission complained of is authorized, allowed, or prohibited by the franchise. (Ord. 668, §9)

**Sec. 13-10. Franchise violations; procedures, notice and cure.**

**(1) Procedures in the event of alleged violations.**

A Grantee may be penalized by the Franchising Authority in the event of a substantial violation or breach of a material provision of this Ordinance. If the Franchising Authority believes that such a breach has occurred and that there is sufficient cause to penalize the Grantee, the following procedures shall be followed:

**(2) Notice, response and opportunity to cure alleged violations.**

(a) The Franchising Authority shall notify the Grantee in writing of any alleged violation or failure to meet any of the terms or provisions of this Ordinance. The Grantee shall be given thirty (30) days from the date of receipt of such notice to respond in writing, stating its explanation for the alleged violations and what actions, if any, have been or are being taken to cure the alleged violation or lack of compliance.

(b) Upon receipt of the Grantee's response, the Franchising Authority may accept the Grantee's explanation and/or remedy proposed. Alternatively, if the Franchising Authority does not accept the Grantee's explanation or believes that a violation will not be properly cured within a reasonable period of time from the date of the original notice of violation, the Franchising Authority may send to the Grantee a notice of its intent to penalize the Grantee.

(c) Prior to issuing a notice of intent to penalize the Grantee, the Franchising Authority shall hold a public hearing providing due process at which testimony and evidence shall be taken concerning the alleged violation. Representatives of the City and the Grantee shall be permitted to address the subject of the alleged violation(s) and related issues at the public hearing. The Grantee may submit evidence to the Franchising Authority that it is diligently pursuing reasonable actions to cure the alleged violation. If the Grantee shows that there are circumstances beyond its control ("*force* *majeure*") which prevent it from immediately curing an alleged violation, such a showing shall be considered sufficient to relive the Grantee from being penalized for an alleged violation or breach of this Ordinance. The Franchising Authority may require the Grantee to provide periodic reports on progress being made to cure any unresolved problem.

(d) If, following a public hearing, the Franchising Authority believes that the Grantee has violated this Ordinance, the Franchising Authority may issue a notice of intent to penalize the Grantee.

(e) The Grantee shall be given a period of sixty (60) days from the date of the issuance of the notice to cure any alleged violation of this Ordinance. If the alleged violation is not cured within the specified sixty (60) day period, the Franchising Authority may take the appropriate steps necessary to penalize the Grantee. Provided, however, that nothing in this section shall be construed to limit or restrict the Grantee's right to appeal the City's actions in state or federal court.

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**(3) Franchise termination and continuity of service.**

(a) In the event that the Franchising Authority denies renewal or revokes a franchise, which denial or revocation is upheld by a final judicial determination, the Grantee shall be afforded a period of one (1) year from the effective date of the final judicial order upholding denial of renewal or revocation of the franchise, including any appeal, within which to transfer or convey the assets of the cable system. Approval of such a transfer shall not be unreasonably withheld.

(b) In the event the franchise is terminated, whether by revocation, expiration, or otherwise, the Grantee may continue to operate the cable system pursuant to the terms and conditions of the terminated franchise, until the happening of one of the following:

(i) In the case of expiration, a new franchise or an extension of the expired franchise is granted.

(ii) In the case of a revocation or a denial of renewal, a final judicial adjudication has been made, including any appeal, which has resulted in a finding or order that the Franchising Authority's denial of renewal or revocation is upheld and the Grantee is not entitled to reinstatement, renewal or extension of the franchise and is not otherwise entitled to continue to operate the cable system.

(iii) The passage of six months from the time the Franchising Authority has denied renewal or revoked the franchise with no appeal being filed by the Grantee.

**(4) Force majeur.**

In the event the Grantee is prevented or delayed in the performance of any of its obligations under this Ordinance by reason of flood, fires, hurricanes, tornadoes, earthquakes or other acts of God, unavoidable casualty, insurrections, war, riot, sabotage, unavailability of materials or supplies, vandalism, strikes, boycotts, lockouts, labor disputes, shortage of labor, unusually severe weather conditions, acts or omissions or delays by utility companies upon whom Grantee is dependent for pole attachments or easement use, or is unable to obtain financing due to investor uncertainty, or any other event which is beyond the reasonable control of the Grantee, the Grantee shall have reasonable time under the circumstances to perform its obligations under this Ordinance or to procure a reasonable and comparable substitute for such obligations. Under such circumstances the Grantee shall not be held in default or noncompliance with the provision of the Ordinance nor shall it suffer any penalty relating hereto. (Ord. 668, §10)

**Sec. 13-11. Transfer or assignment of franchise.**

**(1) Transfer or assignment to a related entity.**

A Grantee may transfer or assign its franchise to a related entity upon thirty (30) days notice to the Franchising Authority. Consent of the Franchising Authority shall not be required for such an assignment, provided that; a) the Franchising Authority is provided with a reasonable showing that the proposed Assignee possesses the technical and financial qualifications to operate the cable TV system and, b) that the Assignee agrees to comply with the terms of this ordinance.

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**(2) Pledge for security purposes or assignment to related entity.**

The Grantee may secure financing or an indebtedness by trust, mortgage, or other instrument of hypothecation of the franchise, in whole or in part, without requiring the consent of the Franchising Authority. Consent shall not be required to assign a franchise from one business entity to another which is operated or managed by the present Grantee or manager of the system. In addition, so long as the manager and/or general partner of the Grantee remains the same, consent shall not be required to transfer the interests of any limited partner of the Grantee, who has no day to day operational control of the Grantee of the system.

**(3) Transfer or assignment to an unrelated entity.**

A Grantee may transfer or assign its franchise to another entity (the "Assignee") upon thirty (30) days notice to the Franchising Authority. Consent of the Franchising Authority shall not be required for such an assignment, provided that; a) the Franchising Authority is provided with a reasonable showing that the proposed Assignee possesses the technical and financial qualifications to operate the cable TV system and, b) that the Assignee agrees to comply with the material terms of this Ordinance. In no event shall the Franchising Authority unreasonably delay or deny the assignment or transfer of a franchise. The reasonableness of the Franchising Authority's actions shall be subject to judicial review by a court of appropriate jurisdiction.

**(4) Transfer procedures.**

(a) If no action is taken by the Franchising Authority within one hundred twenty (120) days following receipt of the notice of a proposed assignment by the Grantee, the assignment of the franchise shall be deemed approved.

(b) If, following a review of the information provided to it, the Franchising Authority determines that the proposed Assignee may not be technically and financially qualified to operate the cable system, the procedures below shall be follows:

(1) Within thirty (30) days following receipt of the notice of proposed assignment from the Grantee, the Franchising Authority shall inform the Grantee in writing by certified mail of its intent to hold a hearing, providing due process to the Grantee and the Assignee, for the purpose of receiving evidence as to the Assignee's technical and financial qualifications. Such hearing shall be held by the City within forty-five (45) days following receipt of the notice of assignment.

(2) Within fourteen (14) days following the date of the hearing, the Franchising Authority shall make a formal determination regarding the proposed assignment and if it determines that the proposed Assignee is not qualified to operate the cable system or it determines for any other reason not to assign the franchise, it shall send a written explanation of its decision to the Grantee by certified mail no later than fourteen (14) days after the public hearing has been held. (Ord. 668, §11)

**Sec. 13-12. System improvements.**

**(1) System upgrade.**

(a) Grantee further agrees to rebuild the existing Potosi cable TV system within three (3) years of the adoption of this Franchise Agreement. The rebuilt system will be

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designed so as to provide the capability of passing a 750 MHz signal through its trunk and feeder lines, and will be initially activated with sufficient bandwidth to deliver up to the equivalent of 83 standard channels to the subscriber drop.

**(2) Programming.**

(a) In conjunction with the rebuild, Grantee agrees to provide additional programming as shall be determined by consumer survey, community needs and economic viability. Grantee specifically agrees to consider the following new programming options upon completion of the rebuild: MOR Music TV, The Learning Channel, ESPN2, Cartoon Network and Pay-Per-View options.

**(3) PEG channels.**

(a) In conjunction with the rebuild, Grantee agrees to set aside for exclusive use by the Potosi High School, one access channel for local educational programming. Grantee further agrees to provide a monetary sum of twenty thousand dollars ($20,000) for the sole purpose of purchasing equipment for the access channel's operation. Said monetary grant shall be made available within six (6) months of the passage of this ordinance. (Ord. 668, §12)

**Sec. 13-13. General provisions.**

**(1) Compliance with State and Federal law.**

The Grantee and the City shall at all times comply with all applicable State and Federal laws and the applicable rules and regulations of administrative agencies. If the Federal Communications Commission (FCC) or any other federal or state governmental body or agency enacts any law or regulation or exercises any paramount jurisdiction over the subject matter of this Ordinance or any franchise granted hereunder, the jurisdiction of the City shall cease and no longer exist to the extent such superseding jurisdiction shall preempt or preclude the exercise of like jurisdiction by the City. The Franchising Authority and the Grantee reserve all rights they each may possess under law, unless expressly waived herein.

**(2) Notice to the Grantee.**

Except as otherwise provided in this Ordinance, the City shall not meet to take any action involving the Grantee's franchise unless the Franchising Authority has notified the Grantee by certified mail at least thirty (30) days prior to such meeting, as to its time, place and purpose. The notice provided for in this section shall be in addition to, and not in lieu of, any other notice to the Grantee provided for in this Ordinance. All notices, requests, demands and other communications required or permitted hereunder shall be in writing and shall be deemed to have been duly given if mailed by certified mail return receipt requested, addressed to: FALCON TELECABLE, 10900 Wilshire Boulevard, 15th Floor, Los Angeles, California 90024, Attn: Howard Gan.

**(3) Street Occupancy.**

Grantee shall utilize existing poles, conduits and other facilities whenever possible, but may construct or install new, different, or additional poles, conduits, or other facilities whether on the public way or on privately-owned property with the written approval of the appropriate government authority, and, if necessary the property owner. Such approval shall not be unreasonably withheld by the governmental agency.

(a) All transmission lines, equipment and structures shall be so installed and located as to cause minimum interference with the rights and appearance and reasonable convenience of

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property owners who adjoin on any public way and at all times shall be kept and maintained in a safe condition and in good order and repair. The Grantee shall at all times employ reasonable care and shall use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public.

(b) Grantee 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 direction of the Franchising Authority or other appropriate governmental authority.

**(4) Access to public and private property.**

(a) Grantee shall have the right to enter and have access to the property and premises of the City or that of any subscriber for purposes of installing cable TV service or recovering and removing Grantee's property and equipment when a subscriber's service is terminated and a subscriber refuses to return such equipment to the Grantee.

(b) The City shall not permit any person who owns or controls a residential multiple unit dwelling, trailer park, condominium, apartment complex, subdivision or other property to interfere with the right of any tenant, resident or lawful occupant thereof to receive cable installation, service or maintenance from Grantee, except as federal or state law shall otherwise require.

(c) Upon request by Grantee, the City shall promptly exercise any rights it may have to permit or enable Grantee to obtain or utilize easements with respect to any residential multiple unit dwelling, trailer park, condominium, apartment complex, subdivision or other property as required to facilitate Grantee's use thereof for purposes of providing system service to the tenants, residents or lawful occupants thereof. In any such proceeding, the restitution to the Owner for the amount of space utilized by the system, considering the enhanced value to the premises resulting from the installation of cable television facilities, shall be a one-time charge of $1.00 per dwelling unit.

**(5) Nondiscrimination in employment.**

The Grantee shall neither refuse to hire nor discharge from employment nor discriminate against any person in compensation, terms, conditions, or privileges of employment because of age, sex, race, color, creed, or national origin. The Grantee shall insure that employees are treated without regard to their age, sex, race, color, creed or national origin.

**(6) Grantee may issue rules.**

The Grantee shall have the authority to issue such rules, regulations, terms and conditions of its business as shall be reasonably necessary to enable it to exercise its rights and perform its services under this Ordinance and the Rules of the FCC, and to assure uninterrupted service to each and all of its subscribers. Such rules and regulations shall no be deemed to have the force of law.

**(7) Severability of ordinance provisions.**

If any section of this Ordinance or the franchise, or any portion thereof, is held invalid or unconstitutional by any court of competent jurisdiction or administrative agency, such decision shall not effect the validity of the remaining portions of the Ordinance or franchise. (Ord. 668, §13)

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**Sec. 13-14. Effective date.**

This ordinance shall become effective upon the date of its adoption by the Franchising Authority. Any failure by the Franchising Authority to follow proper procedures under state or local law in adopting this Ordinance or granting a franchise shall not abrogate the rights or obligation of either the Grantee or the Franchising Authority under this Ordinance. If, following adoption of this Ordinance it is subsequently determined that proper legal procedures have not been followed by the Franchising Authority, it shall be the responsibility of the Franchising Authority to rectify any procedural defects and ratify the terms of this Ordinance. (Ord. 668, §14)

**Secs. 13-15 to 13-41. Reserved.**

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**ARTICLE II**

**UNION ELECTRIC COMPANY FRANCHISE**

**DIVISION. 1 ELECTRICAL SERVICE AGREEMENT**

**Sec. 13-42. Authority to construct an electrical system.**

The franchise, right, permission and authority is hereby granted to, and renewed and vested in Union Electric Company, a Missouri corporation, its successors and assigns, hereinafter called "Company", to construct, reconstruct, excavate for, place, maintain, operate, and use all necessary or appropriate poles, towers, wires, conduits, conductors, manholes, underground vaults, and other equipment, with all necessary or appropriate appurtenances and appliances in connection therewith, in, along, across, over and under the streets, roads, alleys, sidewalks, squares, bridges and other public places within the corporate limits of the City of Potosi, hereinafter called "City", as now fixed and as hereafter extended, and areas dedicated to the City for public utility use, for the purpose of furnishing and distributing electricity for light, heat, power and other purposes within said City and in territory adjacent to said City, and for the purpose of transmitting electricity through said City; all such equipment, appliances and apparatus to be installed and maintained with due regard to and the rightful use by other persons, with vehicles or otherwise, of the streets, roads, alleys, sidewalks, squares, bridges and other public places, and areas dedicated to the City for public utility use, and Company's exercise of the rights, permission and authority hereby granted shall at all times be subject to proper regulation by the City in the exercise of its police powers. (Ord. 642, §1; Ord. 653, §1)

**Sec. 13-43. Public Service Commission rules applicable.**

All facilities of Company in said City shall be installed and maintained in accordance with the applicable rules and regulations of the Missouri Public Service Commission. (Ord. 642, §2; Ord. 653, §2)

**Sec. 13-44. Trim trees.**

In order for Company to render efficient and continuous electrical service it will be necessary for Company to trim the trunks and branches of trees along or over the streets, sidewalks, alleys, avenues, squares, bridges and other public places in said City, and areas dedicated to the City for public utility use, wherever the same are likely to come in contact with its equipment; therefore, Company is hereby granted the right to trim such trees, including the trunk branches, and all parts thereof, so as to enable it to erect and maintain its equipment in a regular and consistent form and manner and to enable it to provide the most efficient and continuous service that the circumstances will permit; provided, however, that Company shall exercise proper care and discretion in cutting and trimming said trees and all parts thereof. (Ord. 642, §3; Ord. 653, §3)

199**Sec. 13-45. Term of franchise.**

The rights, privileges and authority hereby granted shall inure to and be vested in Company, its successors and assigns, successively, subject to all of the terms, provisions and conditions herein contained, and each of the obligations hereby imposed upon Company shall devolve and be binding upon its successors and assigns, successively, in the same manner. (Ord. 642, §4; Ord. 653, §4)

**Sec. 13-46. Obligation of power company.**

This Ordinance shall confer no right, privilege or authority on Company, its successors, licensees, transferees or assigns unless Company shall within sixty (60) days after due notice to the Company of the enactment of this Ordinance, file with the city clerk an acceptance of the terms and provisions hereof; provided, however, that if such acceptance be not so filed within said period of sixty (60) days, all rights, privileges, and authority herein granted shall become null and void. (Ord. 642, §5; Ord. 653, §5)

**Sec. 13-47. Duties of Company.**

This Ordinance and Franchise, upon its enactment and its acceptance by Company, as hereinbefore provided, shall continue and remain in full force and effect for a period of twenty (20) years from the filing of the Company's acceptance. (Ord. 642, §6; Ord. 653, §6)

**Sec. 13-48. Acceptance of franchise.**

Neither acceptance of, nor compliance with, the provisions of this Ordinance shall in any way impair or affect, or constitute or be construed as a relinquishment or waiver of, any right, permission or authority which Company, its successors or assigns, may have independently of this Ordinance; nor shall use by said Company, its successors or assigns, of public property or places in the City as authorized by this Ordinance, or service rendered by said Company, its successors or assigns, in said City, be treated as use solely of the rights, permission and authority provided for by this Ordinance or as service referable solely to this Ordinance or to any obligation of service consequent upon acceptance thereof or as in any way indicating nonuse of, or noncompliance with any obligation incident to, any right, permission or authority vested in said Company, its successors or assigns, independently of this Ordinance; and the acceptance provided for in Section 13-46 of this Ordinance, and each and every compliance with the provisions of this Ordinance or with any obligation arising from acceptance thereof, shall be subject to, and conditioned by, the provisions of this Section 13-48 with the same force and effect as though each of the provisions of this section were expressly incorporated in such acceptance and expressly declared by the acceptor, its successors or assigns, at and prior to the time of such compliance by it, as conditions of such compliance. (Ord. 642, §7; Ord. 653, §7)

200**Sec. 13-49. Percentage of annual gross revenue payable to city by power company.**

As additional consideration and in lieu of any special license tax, occupational tax or any other charge or fee now or hereafter authorized by law (other than any general or special ad valorem taxes authorized by law), the Company shall be obligated to pay and by its acceptance of this Ordinance agrees to pay to the City, a sum equal to five (5) percent of the gross annual revenue from electric service in said City not including any revenue derived from service to a municipality or any revenue from industrial consumers (but not to exclude any revenue derived from retail establishments) billed on the Company's industrial power rates. (Ord. 642, §8a; Ord. 653, §8)

**Sec. 13-50. Computation of revenue payable to city.**

It is understood and agreed that through December 31, 1992, the computation of the percent of the revenue as above provided shall be computed on the basis of the revenue from January 1 through December 31 of each year prior to the year in which the payments shall be made. On or before January 31, 1993, the Company shall pay to the City all of said fees or taxes imposed by this or any predecessor franchise ordinance for electric service provided from January 1 through December 31, 1992. Beginning on January 1, 1993, all such fees or taxes will be based upon the current period's usage. (Ord. 642, §8b; Ord. 653, §8)

**Sec. 13-51. Revenue due city payable on a quarterly basis.**

The Company shall pay the City on or before the tenth day of each month the amount of the payments arrived at in the manner herein provided at the rate of 1/12 of such annual amount each month through December 31, 1992. As of January 1, 1993, the Company shall pay the City on or before the 30th day following the end of each calendar quarter the amount of payments arrived at in the manner herein provided for the immediately preceding calendar quarter. (Ord. 642, §8c; Ord. 653, §8)

**Sec. 13-52. Severability.**

All ordinances and parts of ordinances in conflict with this Ordinance or with any of its provisions are, to the extent of such conflict, hereby repealed. (Ord. 642, §9; Ord. 653, §9)

**Sec. 13-53. Company to comply with city ordinances.**

This Ordinance shall not relieve Company of the obligation to comply with any ordinance now existing in the City or enacted in the future requiring Company to obtain written permits or other approval from the City prior to commencement of construction of facilities within the streets thereof, except Company shall not be required to obtain permits or other approval from the City for the maintenance and repair of its facilities. (Ord. 642, §10; Ord. 653, §10)

201**Sec. 13-54. Savings clause.**

If any provision of this Ordinance, or the application of such provision to particular circumstances, shall be held invalid, the remainder of this Ordinance, or the application of such provision to circumstances other than those as to which it is held invalid, shall not be affected thereby. (Ord. 642, §11; Ord. 653, §11)

**Sec. 13-55. Effective date.**

This bill shall take effect and the rights, privileges, and authority hereby granted and renewed shall vest in Company upon its filing of an acceptance with the city clerk according to the terms prescribed herein. The Ordinance shall be subject to approval or disapproval of the voters of this City only upon the terms and conditions as provided in Mo. Rev. Stat. Sec. 88.251 (1987). If the city clerk does not receive within thirty days after the passing of this Ordinance a petition sufficient in form and signed by the requisite number of voters, it shall be a valid and binding franchise of the City upon the filing of an acceptance by the Company according to the terms prescribed herein and shall remain in full force and effect and cannot be repealed or amended. (Ord. 642, §12; Ord. 653, §12)

**Secs. 13-56 to 13-60. Reserved.**

202**ARTICLE II**

**UNION ELECTRIC COMPANY FRANCHISE**

**DIVISION 2. LIGHTING OF PUBLIC PLACES**

**Sec. 13-61. Contract approved.**

That the proposed contract, in the form as hereinafter set out, by and between the City of Potosi, State of Missouri, and Union Electric Company, a corporation, its successors and assigns, providing for the lighting of the streets, avenues, alleys and other public places of the City by electricity, and providing for the supply of other electric utility service required for the city hall and other premises, according to the terms, provisions, stipulations, and agreements therein specified be and the same is hereby approved and confirmed; and that the mayor and the city clerk of said City be and they hereby are authorized and directed to execute in behalf of the City said contract in the form set out at Exhibit A hereto attached and incorporated by reference. (Ord. 656, §1)

**Sec. 13-62. Grants use of public places.**

The City hereby grants to Union Electric, its successors and assigns, while engaged in the performance of said lighting and other electrical fixtures, poles, lines, wires, cables, transformers, and related apparatus and appliances necessary or convenient for the efficient performance of said duties, upon, under, over and across the streets, avenues, alleys and other public places in said City. (Ord. 656, §2)

**Sec. 13-63. Savings Clause.**

If any provision of this Ordinance, or the application of such provision to particular circumstance, shall he held invalid, the remainder of this Ordinance, or the application of such provision to circumstances other than those as to which it is held invalid, shall not be affected thereby. (Ord. 656, §3)

**Sec. 13-64. Prior ordinances repealed.**

All ordinances or parts of ordinances in conflict with this Ordinance or with any of its provisions are, to the extent of such conflict, hereby repealed. (Ord. 656, §4)

**Sec. 13-65. Effective date.**

This Ordinance shall be in full force from and after its passage and approval. (Ord. 656, §5)

**Secs. 13-66 to 13-70. Reserved.**

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